6. Disregarding its duty in the premises, respondent was careless and negligent in failing to provide a reasonable and safe place for libellant to perform his duties; in failing to provide sufficient, careful, competent and skilful co-employees and superior officers; in failing to provide proper illumination and causing the lights to flicker in the fireroom; in supplying defective, improper and unsafe electrical equipment to illuminate the said fireroom; in failing to inspect the said electrical equipment; in failing to properly operate and maintain the said equipment; in placing and permitting the aforementioned retorter to remain on the fireroom floor in a dangerous and unsafe condition without any regard for the safety of libellant and other members of the crew; in failing to provide proper ventilation [fol. 5] in the fireroom and in permitting the floor plates of the fireroom to become overheated so as to affect the health of libellant and other members of the crew; in failing to warn libellant of the dangerous and unsafe condition of the fireroom floor; in failing to warn libellant of the presence of the said retorter; in failing to remove and place the said retorter in its proper place or out of the way; in failing to provide libellant with proper medical care, treatment and assistance; in refusing to permit libellant to go ashore for medical treatment; in failing to obtain medical care, treatment and assistance for libellant prior to March 12, 1935, when the vessel was at Balboa Heights in the Canal Zone; in failing and refusing to obtain medical aid and assistance in previous points touched by the said vessel; in ignoring libellant's requests for medical treatment, care and aid; in failing to provide proper medical aid and treatment while libellant was on board the said vessel; in failing to provide and maintain sanitary equipment and conditions; in failing to provide the vessel with proper, safe, adequate, suitable and safe appliances and equipment appurtenant thereto; in failing to maintain all the same in safe and proper condition; in failing to inspect all appliances, ways, means, materials and equipment to determine the existence of any unsafe or dangerous conditions; in failing to provide libellant with a safe and seaworthy vessel and safe appurtenances and to keep same in a safe and seaworthy condition.

7. During the entire period libellant was employed, he well and truly performed all his duties, and was obedient

[fol. 6] to all lawful commands of the Master and other officers of the said vessel.

8. Solely by reason of the negligence of respondent and its agents as aforesaid, and without any negligence on libellant's part, libellant sustained a fracture of the toes of his right foot, his right foot was otherwise bruised, swollen, lacerated and injured; his said right foot and toes became infected; the toes of his right foot had to be amputated and subsequently the stumps had to be reamputated, later he was compelled to undergo an amputation of the right foot and lower leg below the knee; he became infected with gangrene; his entire body has become affected because of his said injuries; he has been compelled to undergo numerous operations he has suffered excruciating and agonizing aches, pains, mental anguish, shock and disability; he has been compelled to wear an artificial limb; upon information, libellant believes his injuries will continue to trouble him; he believes he may be compelled to undergo further operations; he has been unable to assume his usual duties and occupation in the past, and upon information believes that he will be permanently disabled and will never be able to resume his usual and customary duties and occupation for the balance of his natural life; he has in the past and will in the future be compelled to expend large sums of money for medicines, medical care and treatment all to his damage in the sum of $75,000.00.

Second Cause of Action

[fol. 7] 9. Libellant realleges all the facts set forth in the first cause of action and in addition thereto respectfully represents shows and alleges:

10. Libellant in accordance with the shipping articles, claims maintenance and cure for the period of his disability in an amount which to your Honorable Court shall seem just and proper upon the trial of this cause.

Third Cause of Action.

11. On on about the 5th day of February, 1935, libellant signed shipping articles as a fireman on board the SS. "Losmar" for an intercoastal voyage to the west coast and return at the rate of $57.50 per month and maintenance.

12. On or about the 12th day of March 1935, libellant was taken ashore for hospital treatment as aforesaid and

because of his said injuries was unable to return to the vessel and complete the voyage.

13. Libellant is without knowledge of the date of the termination of the said voyage, but upon information believes, and therefore avers that the voyage has long since been completed.

14. Libellant has made demand for his wages to the end of the said voyage, after the completion of the said voyage, but respondent has refused and failed to pay same.

15. Libellant therefore claims such sum as your Honorable Court may find to be due him for wages to the end of the voyage and in addition libellant further claims two days pay for each day since and after the date of the com- [fol. 8] pletion of the voyage for which he signed, because of respondent's neglect, failure and refusal to pay libellant his wages to the end of the said voyage.

16. Wherefore, libellant claims the sum of $75,000.00 for the first cause of action, and in addition such amount as may seem to your Honorable Court to be just and proper for maintenance and cure the second cause of action, and wages the third cause of action.

17. All and singular the premises are true and within the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Wherefore, libellant prays that a citation in due form of law according to the rules and practice of this Honorable Court in cause of Admiralty and Maritime jurisdiction, may issue against the said respondent herein, citing it to appear and answer all and singular the matters aforesaid, and that libellant may have judgment for the amount of his claims aforesaid, with interest and costs and such other and further relief as the Court may deem just.

Freedman, Goldstein & Pechner, by (Sgd.) Abraham E. Freedman, Proctors for Libellant.

[fol. 9] *Duly sworn to by Charles W. Taylor. Jurat omitted in printing.*

I hereby certify that there is sufficient cause for suit.

(Sgd.) Abraham E. Freedman, Proctor for Libellant.

[fol. 10] INTERROGATORIES

1. On what date did the SS. "Losmar" complete the voyage from Baltimore to the West Coast and return, referred to in the foregoing Libel?

[fol. 11] IN UNITED STATES DISTRICT COURT

[Title omitted]

ANSWER

To the Honorable the Judges of the United States District Court for the Eastern District of Pennsylvania:

The answer of Calmar Steamship Corporation, respondent, to the libel and complaint of Charles W. Taylor against Calmar Steamship Corporation in an alleged cause of action for personal injuries, maintenance and cure, civil and maritime, alleges:

First. It denies knowledge of the allegations of the first article of the libel.

Second. It admits the allegations of the second article of the libel.

Third. It admits the allegations of the third article of the libel except that it denies that the SS. Losmar is operated in foreign commerce.

Fourth. It admits the allegations of the fourth article of the libel.

Fifth. It denies that it has any knowledge of the allegations of the fifth article of the libel except that it admits [fol. 12] that on or about February 11, 1935, the SS. Losmar was in navigable waters, and it denies that the injuries claimed to have been sustained by libelant were caused in the manner therein alleged.

Sixth. It denies the allegations of the sixth article of the libel.

Seventh. It denies knowledge of the allegations of the seventh article of the libel.

Eighth. It denies knowledge of the allegations of the eighth article of the libel except that it admits that libelant's foot and toes became infected, that he was compelled to undergo operations and to have his right foot and lower leg amputated, and denies that the matters therein alleged were caused by reason of any negligence of the respondent or of any of its agents.

Answering the Second Alleged Cause or Action

Ninth. It repeats the first to eighth articles of this answer.

Tenth. It denies knowledge of the allegations of the tenth article of the libel.

Answering the Third Alleged Cause of Action

Eleventh. It denies the allegations of the eleventh article of the libel.

Twelfth. It denies knowledge of the allegations of the twelfth article of the libel except that it admits that on or [fol. 13] about March 12, 1935, libelant was taken ashore for hospital treatment and did not return to the Losmar and complete her voyage.

Thirteenth. It admits the allegations of the thirteenth article of the libel.

Fourteenth. It denies the allegations of the fourteenth article of the libel.

Fifteenth. It denies knowledge of the allegations of the fifteenth article of the libel except that it denies any neglect, failure and refusal on its part to pay libelant any wages due him.

Sixteenth. It denies knowledge of the allegations of the sixteenth article of the libel.

Seventeeth. It denies the allegations of the seventeenth article of the libel except that it admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court.

Eighteenth. Further answering, and as a partial defense to the first alleged cause of action and a complete defense to the second and third alleged causes of action, respondent alleges that from February 3 to February 24, 1935, libelant was employed on the SS. Losmar while she was laid up at

Sparrows Point, Maryland; that on February 20, libelant signed coastwise articles on the Losmar and sailed under said articles from Sparrows Point on February 24, to Philadelphia where she arrived on February 26th; that on February 28, 1935, libelant signed articles for an intercoastal voyage on the Losmar from Philadelphia to the west coast and return; that on March 12, 1935, while the Losmar was proceeding toward the west coast libelant's foot being [fol. 14] infected, he was put ashore at the Canal Zone for hospital treatment and subsequently returned to the United States on respondent's SS. Alamar. On libelant's return to the United States he was sent to the Marine Hospital at New York where it was learned that he was suffering from Buerger's disease, it becoming necessary to amputate his foot and lower leg. Everything possible was done to prevent spreading of said disease and to effect a cure of libelant's condition.

From the time that libelant first contracted said disease within the knowledge of respondent, respondent furnished to him all medical treatment required other than that furnished to him by the United States Health Service, and between then and the time that cure was effected respondent paid libelant the total sum of $487.00 which covered all wages due libelant and more than any maintenance due libelant from respondent under libelant's articles. In addition, libelant was paid all wages due him at the time he left the Losmar on March 12th at the Canal Zone.

All and singular the premises are true.

Wherefore, respondent prays that the libel herein be dismissed with costs.

(Sgd.) Otto Wolff/Lewis, Wolff & Gourlay, Proctors for Respondent.

[fol. 15] ANSWER TO INTERROGATORY

Respondent answers the interrogatory annexed to the libel as follows:

1. The Losmar sailed from Baltimore on February 24, 1935, on a coastwise voyage to Philadelphia where she arrived on February 26th. At Philadelphia she commenced an intercoastal voyage to the West Coast of the United

States and return, completing the voyage on May 20, 1935, at New York.

(Sgd.) Otto Wolff, Lewis, Wolff & Gourlay, Proctors for Respondent.

[fol. 16] *Duly sworn to by H. W. Warley. Jurat omitted in printing.*

[fol. 17]

INTERROGATORIES

Interrogatories to be answered by libelant under oath:

1. Pursuant to what specific orders was libelant acting as alleged in the fifth article of the libel.

2. State specifically where the SS. Losmar was in navigable waters at the time.

3. Describe what is referred to in the fifth article as a "retorter".

4. Give all the dimensions of the "retorter" referred to in the fifth article, its weight and the substance out of which it is made.

5. State where, how, and for what purposes the "retorter" is used on the Losmar.

6. State where on the fireroom floor the "retorter" was at the time the libelant alleges he struck his foot and tripped over it.

7. In what respects is it claimed that libelant was not furnished a reasonable and safe place to perform his duties, as alleged in the sixth article of the libel.

8. State in what respects libelant was not provided with sufficient co-employees; and also in what respects he was not provided with careful and competent co-employees.

9. State in what respects libelant was not provided with sufficient superior officers; and also in what respects he was not provided with careful and competent superior officers.

[fol. 18] 10. State how many co-employees libelant was provided with.

11. State how many superior officers libelant was provided with.

12. State how many co-employees and superior officers it is claimed that libelant should have been provided with.

13. In what respects is it claimed that libelant was not provided with proper illumination.

14. State what illumination was provided.

15. State who caused the lights to flicker in the fireroom.

16. State where, near the "retorter", lights were in the fireroom.

17. State how long libelant was in the fireroom before he struck or tripped over the "retorter".

18. State whether the lights in the fireroom were out when libelant entered there.

19. State in what respects the electrical equipment for illumination in the fireroom was defective; in what respects it was improper; and in what respects it was insufficient.

20. State in what respects the electrical equipment for illumination in the fireroom was not properly operated and maintained.

21. State in what respects the "retorter" was in a dangerous and unsafe condition.

[fol. 19] 22. State what ventilation there was in the fireroom.

23. State what it is claimed was improper in or in connection with said ventilation.

24. State in what way the alleged failure to provide proper ventilation contributed to libelant's alleged injuries.

25. In what way is it claimed that libelant's health was affected by floor plates in the fireroom becoming overheated.

26. State whether it is claimed that overheated floor plates caused or contributed to libelant's tripping.

27. In what respects is it alleged that the fireroom floor was in a dangerous and unsafe condition?

28. What is the proper place for the "retorter" as alleged in the sixth article?

29. Who refused to permit libelant to go ashore for medical treatment?

30. What previous points did the Losmar touch before March 12, 1935, and the dates of touching such ports?

31. Who, on behalf of respondent, ignored libelant's request for medical treatment, care and aid?

32. Who treated libelant on the Losmar before March 12, 1935?

33. What sanitary equipment and conditions is it alleged that respondent failed to provide libelant?

34. What appliances and equipment is it alleged respondent failed to provide to the Losmar?

35. What appliances and equipment of the Losmar are alleged to have been improper, unsafe and inadequate?

[fol. 20] 36. In what respects is it claimed that respondent failed to maintain the Losmar appliances and equipment in a safe and proper condition?

37. In what respects is it claimed that respondent's failure to inspect appliances, ways, means, materials and equipment contributed to libelant's injury or illness.

38. In what respects was the Losmar unsafe and unseaworthy?

39. What appurtenances on the Losmar were unsafe?

40. When did libelant first report the injury referred to in the libel?

41. To whom did libelant make such report?

42. State at what other times libelant reported the injury and to whom each report was made.

43. State definitely the time when anyone on behalf of respondent refused to permit libelant to go ashore for medical treatment, and who so refused.

44. What treatment was given to libelant on the Losmar and between what dates?

45. Who furnished said treatment?

46. Where was libelant treated on March 12, 1935?

47. What treatment was libelant given on March 12, 1935 after he went ashore?

48. What treatment was libelant given after March 12, and before his return to the United States, and where was such treatment given him?

49. When was libelant first treated after February 11, 1935, and where?

[fol. 21] 50. Did libelant go ashore for treatment?

51. What treatment did libelant have for his right foot or toes before February 11, 1935, and where?

52. What toes on libelant's right foot were fractured as alleged in the eighth article?

53. What toes of libelant's right foot were bruised, swollen, lacerated or otherwise injured?

54. When did libelant first discover that his right foot and toes were infected?

55. When did libelant first discover that he had a fracture of any of the toes of his right foot or of his right foot?

56. When did libelant first report to anyone on behalf of respondent that he had a fracture of the toes of his right foot or of his right foot, and to whom did he make such report?

57. Because of what disease was it necessary to amputate toes of libelant's right foot and later his right foot and lower leg?

58. When did libelant's right foot or toes become infected with gangrene?

59. What operations has libelant undergone besides the amputation of his right foot, toes and leg?

60. When was libelant discharged from the last hospital at which he was a patient?

61. When did libelant demand wages as alleged in the fourteenth article of the libel?

62. Is it not a fact that libelant was paid off when he left the Losmar at the Canal Zone on March 12, 1935?

[fol. 22] 63. Is it not a fact that when paid off at the Canal Zone on March 12, 1933, libelant received all the wages due him up to that time?

64. Is it not a fact that libelant was returned from the Canal Zone to the United States by respondent on one of respondent's vessels?

65. Is it not a fact that on February 11, 1935, libelant was not on articles but was employed on the Losmar on shore pay?

66. Is it not a fact that libelant's illness, as a result of which part of his right leg and his right foot and toes were amputated, was what is known as "Buerger's disease"?

67. Is it not a fact that the following payments were made by respondent to libelant, and receipted for by libelant at the Marine Hospital, Ellis Island, New York?

June 14, 1935	$10
June 28, 1935	10
July 12, 1935	5
July 18, 1935	5
July 30, 1935	15

If libelant denies any of the above payments, specify which particular payments are disputed.

68. Is it not a fact that the following payments were made by respondent to libelant at the Marine Hospital, Stapleton, Staten Island, and were receipted for by libelant?

Aug. 8, 1935	$5
Aug. 16, 1935	5
Aug. 22, 1935	5
Aug. 29, 1935	5
Sept. 5, 1935	5
Sept. 12, 1935	5
Sept. 19, 1935	10
Sept. 26, 1935	10

[fol. 23] If libelant denies any of the above payments, specify which particular payments are disputed.

69. Is it not a fact that the following payments were made by respondent to libelant, and receipted for by libelant, at

the home of libelant's sister-in-law, 3398 Third Avenue, Borough of Bronx, New York City?

Oct. 4, 1935	$14
Oct. 10, 1935	14

If libelant denies any of the above payments, specify which particular payments are disputed.

70. Is it not a fact that the following payments were made by respondent to libelant, and receipted for by libelant, at respondent's office in New York City?

Oct. 16, 1935	$14
Oct. 22, 1935	14
Oct. 29, 1935	14
Nov. 6, 1935	14
Nov. 13, 1935	14
Nov. 19, 1935	14
Nov. 26, 1935	14
Dec. 3, 1935	14
Dec. 10, 1935	14
Dec. 17, 1935	28
Dec. 31, 1935	28
Jan. 14, 1936	28
Jan. 23, 1936	56
Feb. 6, 1936	14
Feb. 9, 1936	28
Mar. 3, 1936	28
Mar. 10, 1936	28

If libelant denies any of the above payments, specify which particular payments are disputed.

[fol. 24] 71. Is it not a fact that from June 14, 1935, to March 10, 1936, respondent paid to libelant in cash a total of $487. and that libelant signed receipts for said payments aggregating that sum.

72. Is it not a fact that libelant incurred no medical expense from the time of the accident alleged in the libel to October 3, 1935?

73. Is it not a fact that up to October 3, 1935, libelant was maintained at marine hospitals by the Government and by the respondent without cost to himself?

74. Is it not a fact that the artificial limb which the libellant alleges that he has been compelled to wear was furnished by the Public Health Service?

(Sgd.) Otto Wolff, Lewis, Wolff & Gourlay, Proctors for Respondent.

[fol. 25] IN UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF PENNSYLVANIA

In Admiralty

No. 23 of 1936

CHARLES W. TAYLOR, Libellant,

v.

CALMAR STEAMSHIP CORPORATION, Respondent

Statement of Evidence

Before Hon. Oliver B. Dickinson, J.

Philadelphia, Pa., Monday, June 15, 1936, 10:00 o'clock a. m.

Present:

Messrs. Freedman, Goldstein & Pechner, (by Abraham E. Freedman, Esq., and Ivan P. Pechner, Esq., proctors for the libellant;

Messrs, Lewis, Wolff and Gourlay, (by Otto Wolff, Jr., Esq.,) and F. A. Bull, Esq., proctors for the respondent.

Transcript of Testimony, Rulings and Exceptions

STATEMENT AS TO INTERROGATORIES

Mr. Wolff: If your Honor pleases, before we go into this case, let me say this:

I appear for the respondent. At the close of the respondent's answer we addressed a series of interrogatories to the libellant, some seventy-five of them. The libellant has filed its answers and in most instances has said that it is not re- [fol. 26] quired to answer and has not answered. We, therefore, filed exceptions to the libellant's refusal to answer the interrogatories.

We have served notice on him that we would submit to the Court this morning a motion directing him to answer the interrogatories or be declared in default or whatever the Court may see fit to do. Now, if the libellant is here and takes the stand, it may be that a number of those interrogatories will be answered by his testimony. My suggestion is that we pass the motion until the libellant has testified.

Evidence on Behalf of the Libellant

OFFERS IN EVIDENCE

Mr. Freedman: If the Court please, this is an action in admiralty under the Jones Act brought by Charles W. Taylor against the Calmar Steamship Corporation.

Now, I offer in evidence the second answer of the respondent, admitting the second allegation of the article of the libel.

(The said paragraphs read, respectively, as follows:

"1. Libellant is a resident of the City of Philadelphia, State of Pennsylvania.

"Second. It admits the allegations of the second article of the libel.")

Mr. Freedman: I offer in evidence the third, and the fourth and that part of the fifth paragraph, which admits that the vessel was in navigable waters at the time of the alleged injury of the libellant.

(The said paragraphs read, respectively, as follows:

[fol. 27] "2. Respondent, Calmar Steamship Corporation was and still is a corporation duly organized and existing under and by virtue of the laws of the State of Delaware.

"3. Upon the information and belief that at all the times hereinafter mentioned, respondent owned, operated and controlled the SS. "Losmar", engaged in coastwise intercoastal and foreign commerce.

"Third. It admits the allegations of the third article of the libel except that it denies that the SS. Losmar is operated in foreign commerce.

"Fourth. It admits the allegations of the fourth article of the libel.

"Fifth. It denies that it has any knowledge of the allegations of the fifth article of the libel except that it admits that on or about February 11, 1935, the SS. Losmar was in navigable waters, and it denies that the injuries claimed to have been sustained by libelant were caused in the manner therein alleged.")

Mr. Freedman: I offer in evidence that part of paragraph eight which reads as follows:

"except that it admits that libelant's foot and toes became infected, that he was compelled to undergo operations and to have his right foot and lower leg amputated."

I offer in evidence the paragraph thirteenth of the answer.

(The said paragraph read, respectively, as follows:

"13. Libellant is without knowledge of the date of the termination of the said voyage, but upon information believes, and therefore avers that the voyage has long since been completed.

"Thirteenth. It admits the allegations of the thirteenth article of the libel."

[fol. 28] Mr. Freedman: I offer in evidence that part of the seventeenth article of the answer which reads as follows:

"except that it admits the admiralty and maritime jurisdiction of the United States and of this Honorable Court."

I also offer in evidence that portion of the eighteenth article of the answer which reads:

"On libellant's return to the United States he was sent to the Marine Hospital at New York where it was learned that he was suffering from Buerger's disease, it becoming necessary to amputate his foot and lower leg."

Charles W. Taylor, having been duly sworn, was examined and testified as follows:

By Mr. Freedman:

Q. How old are you, Mr. Taylor?

A. Forty-three past.

Q. And what is your occupation?

A. Merchant seaman.

Q. How long have you followed the sea?

A. Since about 1908.

Q. Did you ever serve on the Steamship "Losmar"?

A. Yes, sir; I did.

Q. And what was your rating on that vessel?

A. I first shipped out on that boat as a wiper. In about a month's time I was made a fireman.

Q. What was your salary?

A. $57.50 a month and maintenance.

Q. When did you join the vessel?

[fol. 29] A. October 16, 1934.

Q. And where was the vessel lying at that time?

A. At the Baltimore Ship Building Company.

Q. How long did you remain on the vessel?

A. Until March 12, 1935.

Q. Were you a member of the crew on or about February 9, 1935?

A. Yes, sir; I was.

Q. Where was the vessel at that time?

A. At Sparrows Point, Maryland.

Q. Now, will you tell us what happened on that day?

A. My partner called me to go on watch between three-thirty and four o'clock. My time was up, and I started to go on watch——

Q. Pardon me, was that in the afternoon?

A. Yes, sir.

Q. You had the four to eight watch?

A. The four to eight watch. I proceeded into the engine room at four o'clock—around four o'clock—to take over my duties. When I came into the engine room my first duty was to take care of the ice machine, oil it, and see it wasn't hot; come across the companion-way into the engine room, and then take care of the generator, oil it. After I done this, I proceeded down into the engine room. I had other work in the engine room to do. After I finished that, I looked at my water in the boilers, and starts to go into the boiler room through the companion-way that leads from the engine room into the boiler room. Just as I was about to enter the fire hole, the lights flickered and went out. Just then I stubbed my foot on a bunch of retarders that was laying there. I had to stop a few seconds and had to put my hands up like that (indicating)——

[fol. 30] Q. Will you speak just a little louder, so the Judge can hear you?

A. I had to stop for a few seconds, and my foot was kind of numb. I had to put my fingers up like that (indicating) and feel my way out back through the boiler room. I proceeded up on deck to see what was wrong with the lights. When I got up on deck, there was two engineers changing the generators. One generator had stopped and they was starting the other one up.

Q. Did you find out what caused the lights to go out?

A. That generator stopped. Somebody shoved——

Mr. Bull: I object to this, if it is something that somebody told him. He was not there.

Mr. Freedman: He did not say, your Honor, that somebody told him.

Mr. Bull: He does not know anything about it. He was down in the engine room.

Mr. Freedman: He said the generator stopped.

By Mr. Freedman:

Q. How do you know that the generator was stopped, Mr. Taylor?

A. The lights went out. When I got up there, they were working on the other one, trying to start it.

Q. Which generator was it?

A. There are two generators they had. One generator was connected with the compressed air line, and they connected that air line into the pipe, and they took the head off the generator, and turned on the compressed air.

Q. How did you know that the generator was stopped?

A. All the lights was out and the engineers were running around. All the lights in the ship was out.

[fol. 31] Q. Could you tell that the generator was stopped?

A. Yes, sir. I oiled it.

Q. What happened after that?

A. After that I went on the deck—I couldn't see nothing to do to help them. So, I went out on deck. There was ice water there, and I went and got a drink of water. When I got out there—my shoe had been cut where I had bumped against these retarders.

Q. What part of your shoe was it?

A. Right here (indicating).

Q. Where in connection with your toes would that be?

A. The small toe.

Q. All right, sir. Proceed.

A. So, I didn't think it was anything. After the lights went on, I started back down below. I had work to do in the fire hole. When I got back down there—they put the lights on before I started back down there.

Q. How soon did they put on the lights before you started down?

A. They were off, I should say, between five and ten minutes. The few minutes I was on deck—maybe fifteen minutes after I left the fire hole, I was back down in the engine room.

Q. With reference to the time that the lights went on again, how soon after that did you proceed back to the engine room or the boiler room?

A. Right after I got a drink of water.

Q. How soon was that after the lights went on again?

A. I would say about three or four minutes afterwards.

Q. All right. Go ahead.

A. I proceeded back into the fire hole. When I got into the fire hole, there was a bunch of retarders laying there [fol. 32] right opposite the companion-way that I was supposed to enter to the boiler room. They were laying there. I had to move these retarders.

Q. Where were they lying?

A. Just a little bit from the entrance where I entered the boiler room.

Q. On which side of the entrance?

A. To the left, just in front of the first door of the boiler room.

Q. About how wide was that companion-way that you were going through?

A. Well, I could put up my both hands and touch the boilers (indicating).

Q. In feet, approximately, how much would you say?

A. Just enough to let you through. About four feet.

Q. Go ahead.

A. When I got back in the fire hole, I saw the retarders that I had stumbled over, and I had to take them over to the bulkhead, otherwise I would have been stumbling over them the whole watch.

Q. And what was the proper place for these retarders?

A. The engineer should have told us to put them up against the bulkhead or to keep them out of the way.

Q. Is that the customary place?

A. That's the customary place when we take them out. You see, when we take them out, they are very hot, very, very hot. You throw them down on the floor plates and after they get cold, you put them over to the side, to keep them out of everybody's way.

Q. Will you describe a retarder?

A. A retarder is a piece of metal, about four inches high, and it's something like a spiral stairway, and it's between [fol. 33] five and seven feet long—that is, to the best of my knowledge.

Q. What is the condition of them?

A. They put the retarders in—if they are in there any length of time, the ends burn off, and they get very sharp. Sometimes when we pull them, they cut your clothing.

Q. All right. Proceed with your story.

A. I piled them against the bulkhead and after I got them over the*m*, I finished my watch. All this time that foot was kind of tender, but I didn't pay much attention to it.

Q. How many retarders were piled there?

A. I would say about between fifty and one hundred.

Q. How large, approximately, was the pile?

A. I would say it was about a foot high, about a foot and a half wide, and about five or six feet long. I never measured it.

Q. Would you say that this pile had interfered with your passage into the boiler room?

A. Yes, sir. I had to get them out of my way to continue my watch.

Q. Go ahead and tell us what happened.

A. After my watch was over, I immediately went to my quarters and undressed myself to take a bath, as I usually do, and when I had my shoe off, I looked at it and seen my toe was bruised and swollen.

Q. Which toe?

A. My little toe.

Q. On which foot?

A. On the right foot, and I immediately put on my clothes, put a clean sock on it, and went amidships to look for the steward. The steward wasn't on board. So, I walked around, I didn't know who to see, and there was a man working—he had just come from the galley and [fol. 34] went into his room.

Q. What department was he in?

A. Steward's department.

Q. Who was in charge of the steward's department at that time?

A. He was the only man in the steward's department.

Q. What was his name?

A. Mr. Aaronson.

Q. All right, go ahead.

A. I asked him, "Have you got something to put on my foot? I hurt it in the fire hole." He says, "No; I haven't, but see the old man"—referring to the captain—and I went to look for the captain and he wasn't on board, and I went and looked for the mate and he wasn't on board. So, I come back and I told Mr. Aaronson, and I took my shoe off and showed him.

Q. About what time was this?

A. This was after eight o'clock at night.

Q. All right, go ahead.

A. So, I proceeded to go back to my own quarters. There was a small bottle of mercurochrome that somebody had in their locker. After I had washed it and put mercurochrome on it, I tore up a clean, white handkerchief and I wrapped it up myself, and I put a clean white sock on it and went to bed. I went to bed because I didn't want to go ashore. On Sunday morning I woke up between three-thirty and four o'clock, to take over the morning watch. I proceeded down and done my watch. After I come off watch Sunday morning, I immediately went to the steward and asked him if he would give me some medicine for my foot. He did. He washed it out with some solution.

[fol. 35] Q. Did you tell him what happened?

A. Yes, sir.

Q. Go ahead.

A. He immediately washed it out and put some kind of salve on it and a clean white bandage he put on. I stayed aboard all day Sunday. I stood my watch Sunday night. After I stood my watch Sunday night, Monday morning I immediately went to the first mate and asked him for a hospital ticket. I told him I wanted a hospital ticket to go to the hospital and have my foot treated, have my foot looked at. He told me the captain wasn't aboard and he didn't have any hospital ticket and I would have to wait until the captain come back and signed it, and he said, "Why don't you use your discharge?" And I said, "I will do that." About eight-thirty I started for the Marine Hospital in Baltimore, and *and* I went there, and they looked at my foot and gave me some medicine for it, and gave me a blood test, and a urinalysis, and gave me an examination, and told me my teeth should be taken care of. I said, "I am going to have them taken care of," and he said, "Start right now," and I did. I went to the Baltimore Hospital a few days later to get some medicine. A short time after that we had left Baltimore to come to Philadelphia.

(A recess was here taken until 2:00 o'clock p. m.)

After recess.

Present: Parties as before noted.

[fol. 36] CHARLES W. TAYLOR, resumed.

By Mr. Freedman:

Q. Now, going back for a moment, Mr. Taylor, will you describe more fully the position of the retorters in the boiler room at the time you stumbled over them?

A. When I came back down in the boiler room, the retarders were right in my pathway, right inside of the entrance of the boiler room,

Q. When you say you came back down into boiler room, you mean after the lights——

A. After they had put the lights on.

Q. Where did you see them?

A. Just in my pathway, to the left of the entrance.

Q. About how far to the left of the entrance?

A. I will say about one or two feet.

Q. Right in the passage-way of the boiler room?

A. Yes, sir.

Q. Did you know that the retarders were there?

A. No, sir; I did not.

Q. Did you see the retarders when you stumbled over them?

A. No, sir.

Q. Was the pathway clear on previous occasions; that is, to the boiler room?

A. Yes, sir; it was.

Q. And when was the last time that you went down into the boiler room before this occurrence that you have related?

A. At eight o'clock in the morning I left the boiler room.

Q. You mean the previous morning?

A. Yes—the same morning, the same day, eight o'clock in the morning.

[fol. 37] Q. Did you have any warning that the lights were going to flicker and go out?

A. No, sir.

Q. Did you know that they were going to flicker and go out?

A. No, sir.

Q. Was there anyone else on watch with you at the time?

A. No, sir.

Q. You were the only man down there on watch?

A. The only man on watch.

Q. And now, did it hurt you after you struck your foot against the retorters?

A. Yes; it hurt me, but not very much. I didn't pay much attention to it. I thought it would be all right.

Q. Why did you go to the steward for treatment?

A. That's the routine on board ship. As soon as you are hurt, you go to the steward. Each of these men has a key to the first-aid kit.

Q. Do you mean that it is customary for the men to be treated by the steward on board ship?

A. Yes, sir.

Q. Now, I think you testified before that you were just about to leave Baltimore. Will you go on from there?

A. When we left Baltimore, they gave me a small bottle of medicine in the hospital to take care of my foot, to use it, and as soon as we arrived in Philadelphia, I immediately went to the mate and asked him would he give me a hospital ticket, so I could go to the out-patient department in Philadelphia. He did, and I immediately went to the out-patient department——

Q. Excuse me. Did you tell him why you wanted the hospital ticket?

[fol. 38] A. I just told him I wanted to get more treatment for my foot.

Q. Go ahead.

A. And he wrote out the ticket, and I went to the out-patient department in Philadelphia, and they gave me some more medicine, and they took a blood test and urinalysis and examined me all over, and told me it was all right to complete the voyage and to use this medicine continuously, which I did.

About two or three days out of Philadelphia, my medicine run out and I immediately reported to the steward and the steward gave me treatment. He washed my foot out with some kind of solution and put some salve on it, and he wrapped it up, and he told me to come up every morning. I did. Sometimes when I would come off watch at night, I waked him.

On the day of arrival—when we neared the Panama Canal—I continued the treatment with the steward until we hit the canal. About three o'clock in the afternoon, I remember we hit Colon, Panama. I went to the captain and I says to the captain, "Will you please get me a doctor as soon as we hit port?" I says, "My foot is terribly sore. I can hardly navigate. I can only hobble around on it." He says, "O. K., you will get a doctor. You will get a doctor."

Q. Where was that?

A. At Colon, Panama. We had to pull in there to get fuel oil.

Q. And how long did you remain there?

A. All night.

Q. Go ahead.

A. When we landed I says, "Captain, did you make any contact with a doctor for me?" And he says, "I can't get in touch with the agents."

[fol. 39] Q. What was the condition of your foot at that time?

A. It was badly and all inflamed. It had cracked open on the side and underneath there was a hole right on the foot (indicating).

Q. Did you show it to the captain?

A. Yes, sir; and I showed it to the chief engineer.

Q. What was the condition of your shoe?

A. I removed it—I had to cut the whole top of my shoe off, so I could get my foot in it. I had to remove the whole thing. I was simply walking on the sole of the shoe—no top on it.

Q. Go ahead.

A. I was in agony. I went to the chief engineer and I told him, I said, "Chief, I don't want you to think I'm laying down on the job. I want to keep the job. It's a good job." I says, "I don't want you to think I am laying down on the job." He says, "That's all right. You will get a doctor as soon as we hit port." So, I said, "O. K." So, I went back to my quarters. When we docked—we were just coming off watch—I went to the captain again and I said, "Please get me a doctor," and he said, "I can't get in touch with a doctor." Now, there was a hospital in Colon at that time and all he had to do was to get in touch with the hospital.

Mr. Bull: I object to that.

By Mr. Freedman:

Q. Go ahead.

A. The captain said, "You will have a doctor at the first lock in the morning." Well, all I could say was, "All right." Everybody left the ship but me then. I couldn't walk.

[fol. 40] The next morning, when I came off watch, I said "Captain, I don't see no doctor yet." He says, "You will get a doctor all right. You will get a doctor." So, we proceeded through the first lock and when we got to the Peter Miguel locks, we had to tie up at the lock to let some other ship come through the lock. The inside of the lock was closed, and I says, "Captain, will you please get me a doctor?" And he said, "You will get a doctor all right." So, I hollered to the men on the dock, "Don't let go your lines until I get a doctor." Then the captain gave orders for the doctor, to call a doctor. When the doctor came on board, he immediately ordered the captain to put me ashore. They put a gangway down, and I couldn't navigate down the gangway; two sailors had to assist me, and they brought me to the Gorgas Hospital at Ancon, Panama. I arrived at the hospital at one-thirty—about between one-fifteen and one-thirty in the afternoon. As soon as I arrived at the hospital, they immediately undressed me, gave me a hot bath, and put me to bed, and dressed my foot with a wet dressing, and they put it under an electric light heater, and that continued that day. The pain was something terrible. I couldn't stand it. I was in agony. That continued every night.

They used to give me pills, some kind of pills to make me sleep, and I used to wake up during the night, and I used to say to the nurse, "please get me a doctor." My foot was paining. I couldn't hold it still.

On the 27th of March they operated on me. They took the first little toe off.

Q. Of which foot?

A. Of my right foot. They took the little toe off, and it left a hole there, and they used to patch that hole up with medicated gauze, and I used to say to the doctor, "Please [fol. 41] take it off." The pain was terrific. What I went through I never want to go through again.

So that continued until the latter part of April, and the agent came to me and he says, "There's a ship coming through tomorrow." He says, "What do you say? How would you like to go to New York?" I said, "I don't care what they do or where I go as long as I get some treatment to get rid of this pain. I can't stand it," I says. So he arranged for my release, and he came there on April 4th and he put me on board the steamer "Alamar", and the doctor, when he dressed my foot, he says, "When you go on board this ship, there's no doctor," and he says, "Don't let anyone in the crew remove that bandage until you arrive in New York City." He says, "As soon as you arrive in New York City, go immediately to the Marine Hospital." Coming up for nine days, up from the Canal, the pain was terrible. I felt just like jumping over the side. Night after night I sat on the hatch. I couldn't sleep with the pain in my foot.

When I arrived in New York, they called for an ambulance, and the ambulance came alongside of the dock, and they put me on the ferry and took me to Ellis Island. A week later they operated on me beginning down the side here (indicating). All this time, after I entered the hospital, they had to soak my foot in hot water, and when they removed the bandage, there was a big hole in there. It had festered, and they washed my foot with some crystals, and they bandaged my foot, and put my foot under another heater, and they continued this day after day, and night after night I cried. I couldn't stand my foot under this heater. I begged and begged the doctor to do something for my foot. I said, "Please stop this pain." I couldn't stand it no longer, I couldn't get no sleep. They used to give me all kinds of dope, dope pills and put injections in my arm. They changed this dressing in a week or two. They gave [fol. 42] me another kind of wet dressing, and they put it under the heater. The agony and the suffering I went through, I would never go through again. I don't know how I survived it.

A few weeks after that they took the next toe off.

Q. You mean the one next to the small one?

A. Yes, sir.

Q. On the right foot?

A. On the right foot.

Q. All right, go ahead.

A. They had taken the second toe off, and they operated up the side. They injected some kind of stuff in there to try and stop the pain, which it didn't, and they continued this wet dressing treatment continually.

Finally, they said, "We are going to try something else and we are going to put you in the hot box,"—it was agony, terrible agony. At seven o'clock in the morning they put me in a tub of water as hot as I could stand it; they gave me ice water to drink, and they wrapped me up, and they gave me some kind of ether, and you stay in there for eight hours; and there's a nurse to watch over you. They raise your fever to such a high extent it is supposed to kill everything there. Then they put me back in bed, and they continued to give me all kinds of injections in my arm—a big glass of water, and then the injection they used to inject in my arm. All this time I am in agony.

Finally, they told me they were going to send me over to Staten Island, they had better equipment over there. This was on August 7th, and they sent me over to Stapleton, Staten Island.

[fol. 43] Q. The Marine Hospital?

A. Yes, sir; at Stapleton, Staten Island. They continued the wet treatments over there and put my foot in some kind of a new heater they had, and they continued the treatment. All this time I was in agony, and the doctor ordered them to give me a hyperdomic injection every four hours.

Q. Then what happened?

A. This treatment continued until September 6th. September 6th they amputated my right leg between six and seven inches below the knee. All the time I am in agony.

After this operation the pain seemed to go away gradually.

Q. You mean the amputation stopped the pain?

A. The amputation relieved the pain a whole lot and it gradually left me.

Q. What is the condition of your leg now?

A. Well, the condition of my leg, this morning when I was taking a shower, I noticed right on the bottom, where it was amputated, there's a little sore about as big as the end of my small finger. On the side my leg has blisters from the pressure on the leg.

Q. Are you wearing an artificial limb now?

A. Yes, sir. They continued to dress my foot. Every day they used to come and dress my foot and give me medical attention with it and give me all kinds of tests.

On October 3rd they released me to the out-patient department, to return; first, it was twice a week, and then they changed it to once a week.

I used to have to go back there—I still have to go back there every week and let them examine me, give me a thorough examination of both my legs and arms.

[fol. 44] In the latter part of December they had me fitted for this artificial leg. On January 15th, they sent me to get the leg, and when I first got it I couldn't wear it steadily; I used to wear it an hour or two at a time and then rest.

Finally, I am now getting around with a cane.

Q. Now, prior to the time of this accident, what was the condition of your health?

A. Perfect condition.

Q. Did you have any pain in your legs?

A. No, sir.

Q. Have any trouble with your legs?

A. No, sir.

By the Court:

Q. What did you say your age was?

A. Forty-three.

By Mr. Freedman:

Q. Were you examined by Dr. Seltzer at my request?

A. Yes, sir.

Q. Were you examined by Dr. Kay at my request?

A. Yes, sir.

Q. Were you examined by Dr. Lowry at my request?

A. Yes, sir.

Mr. Freedman: If your Honor pleases, I should like to offer in evidence at this time the life expectancy of this man or what the life expectancy would have been from the mortality tables. I believe it is twenty-six years according to the tables.

The Court: Well, you probably can agree on that.

Mr. Freedman: If your Honor pleases, it is a matter of judicial notice anyway, as I understand it.

The Court: Just put it on the record.

[fol. 45] Mr. Wolff: Show what the tables are.

The Court: What is it?

Mr. Freedman: According to the American Experience Tables, computed by the life insurance companies of America, the life expectancy of a man forty-three years of age is twenty-six years.

The Court: Do you know what it is by the Carlisle Tables?

Mr. Freedman: No, sir; I have not referred to them, but I think it is practically the same.

By Mr. Freedman:

Q. Just go back for a moment, Mr. Taylor. Will you please tell us where the proper place is for these retorters that were in the boiler room?

Mr. Bull: I object to that, if your Honor pleases.

Mr. Freedman: Having worked on the vessel and having engaged in the duties of a seaman——

The Court: When you say "the proper place" do you mean the accustomed place?

Mr. Freedman: I will change it to "the accustomed place."

(Objection overruled)

The Witness: When we used to go on watch, we would take the retarders out of the tubes and punch the tubes and clean them, and we would throw them in front of the boiler, and as soon as we got them all out, as soon as they were cold enough to handle, we would pile them up against the bulkhead. That was to keep them out of our way, so we could proceed with our duties.

By Mr. Freedman:

Q. How much has it cost you on an average to live a day since the time you have been discharged or released as an [fol. 46] in-patient from the Marine Hospital?

Mr. Bull: If your Honor pleases, I object to that. He has been released and they have done what they could for him and that's the end of the maintenance part of it.

Mr. Freedman: He has not been released wholly. He has been released to out-patient treatment, and the man has testified that he is supposed to go back periodically.

The Court: I will permit you to show that.

The Witness: It costs me on an average between two dollars and a half and three dollars a day.

The Court: I think he had better explain what he means by that.

By Mr. Freedman:

Q. Will you tell us how you expend or how you have expended that much?

A. Well, I spend about $6 a week for my room and my laundry. It costs me on the average about eight or eight and a half for my meals. It costs, I will say, about two dollars and a half or three dollars for the different medicines and bandages that I have got to buy for my leg; adhesive tape, and so forth. I had to buy three new socks, stump socks, which cost me $1.50 apiece. The average life of them is about a month or a month and a half. I have got to have a clean sock every morning and they have got to be washed with just Lux. I have to use Johnson's medicated soap to wash my leg and keep it clean. The doctor advised me to do that. I do it morning and night. Around the hotel, in the afternoon, I change my socks. I change them as often as I possibly can.

[fol. 47] Q. Just confine yourself to the cost of the various articles.

A. First, I figure I can't walk very much. As soon as I walk I perspire something terrible. When I want to go any place, it's a street car fare no matter where I want to go, and the rest of it, cigarettes—it costs me about $1.50 a week, and whenever I want a haircut and a shave, and the rest of it, two days a week, and take in the movies or something like that.

Cross-examination.

By Mr. Bull:

Q. When did this happen, Mr. Taylor?

A. Well, the nearest to my recollection, it was on Saturday, March 9th—February 9th.

Q. February 9th?

A. Yes, sir.

Q. It was on Saturday, was it?

A. As near as I can recollect.

Q. Up until today you always said it was on the 11th, haven't you?

A. That may be so. I said "on or about."

Q. When did you say "on or about"?

A. When I first made my statement.

Q. In your complaint you alleged it was the 11th, didn't you?

Mr. Freedman: If your Honor pleases, he said it was "on or about" the 11th.

By Mr. Bull:

Q. Well, you stated it was on or about the 11th in your libel, didn't you? Will you answer?

The Court: Well, whatever the libel shows. There is no use of cross-examining him on that.

Mr. Wolff: It does show that at the top of page 2, if your Honor pleases.

[fol. 48] By Mr. Bull:

Q. When did you first decide it was the 9th?

A. When the hospital records came back, they told me so.

Q. The hospital records told you it was the 9th? What hospital records?

A. Because it was the 11th I went to the hospital. I know it was two days before that.

Q. The 11th when you went to the hospital? Where?

A. In Baltimore, Maryland.

Q. Was it in the morning or in the afternoon when this happened?

A. It was in the afternoon.

Q. And where was the ship?

A. At the dock.

Q. Where?

A. Sparrows Point.

Q. What were you doing there?

A. That's where she has always pulled in for the regular boiler routine—cleaning the boilers and any repair work to be done.

Q. In other words, it was at the dock doing repair work, is that it?

A. Yes, sir.

Q. She wasn't loading or discharging cargo?

A. No, sir.

Q. What dock was it?

A. I couldn't exactly describe it. It was just as you go into the entrance of the Baltimore Ship Building Company.

Q. Is it what we call the High Wharf or is it the ship building yard?

A. No; it is way over from that ship building yard.

[fol. 49] Q. You don't know what the name of it is, however?

A. No, sir; I don't.

Q. What time did you say it happened—four o'clock in the afternoon?

A. Between four—just as I was going on watch at four o'clock.

Q. Well, was it just at four o'clock or before four o'clock, or after four o'clock?

A. A little after four.

Q. A little after four?

A. Yes.

Q. What was the ship doing there beside repair work? Anything?

Mr. Freedman: I object to that. I ask counsel to be more specific. What the ship was doing would not have been within the knowledge of this man.

The Court: If he cannot answer, he may say so.

The Witness: The ship was tied up there. We had just completed our voyage, and we were tied up there to do any repair work before we started on our voyage.

By Mr. Bull:

Q. And how long was she tied up there in that situation?

A. Well, until the time they left and come to Baltimore—or to Philadelphia.

Q. When was that? How long afterward?

A. I don't know whether we left there the 25th or the 26th.

Q. Somewhere around that time?

A. Somewhere around that time.

Q. And had you been lying there in the same state long before the 9th?

A. We got paid off on the 4th.

Q. On the 4th?

A. Yes, sir.

[fol. 50] Q. That is, from the preceding voyage?

A. Yes, sir.

Q. On the 9th you were on shore pay, were you?

A. Yes, sir.

Q. When did you sign articles again?

A. When we came to Philadelphia.

Q. When you came to Philadelphia, and that was around the 26th, you say?

A. No; we arrived here, I think it was, the 28th.

Q. So that from the 4th until either the 25th or 26th you were on shore pay, and when you got to Philadelphia you signed articles around the 28th, is that it?

A. Somewhere between the 28th and the 1st,—somewhere around there.

Q. In the meantime, on the 11th, you say you went to the Baltimore Marine Hospital, did you?

A. Yes, sir.

Q. And did you get permission from any of the officers on the ship to go there?

A. Yes, sir.

Q. At that time what was the appearance of your foot?

A. Why, it was—the little toe was swollen and bruised and it was cut on the side.

Q. The little toe was cut on the side?

A. Yes, sir.

Q. Now, how long did it have that appearance?

A. Just a couple of days.

Q. What was the appearance on the 9th, the appearance of your toe?

A. O. K.

Q. Nothing wrong with it at all?

[fol. 51] A. No, sir.

Q. You didn't have any sore or any scab between the toes?

A. No, sir.

Q. That was the first time you saw one there?

A. Yes, sir.

Q. At the Baltimore Marine Hospital, what did they do?

A. They examined me, gave me a blood test, and urinalysis, and gave me a bottle of medicine, and told me to put this medicine on twice a day.

Q. Did they put anything on?

A. They put some of this medicine on it and they told me to continue doing it.

Q. And they told you to go back to the ship?

A. Yes, sir.

Q. Did you go back to the ship?

A. Yes, sir.

Q. Did you report to anybody on the ship that you had been to the hospital?

A. Yes, sir.

Q. Who?

A. I reported, before I left to go to the hospital in the morning, to the first mate.

Q. I asked you, when you came back from the hospital, did you report to anybody there?

A. Yes, sir.

Q. To whom?

A. To the chief engineer and the assistant engineer.

Q. Did anything happen?

A. One of the oilers offered to stand *by* watch, but I said I would stand it myself.

[fol. 52] Q. And did you stand it yourself?

A. Yes, sir.

Q. When did you go back to the Baltimore Marine Hospital?

A. About two or three days later.

Q. And the ship was still at Sparrows Point at that time?

A. Yes, sir.

Q. When you went to the hospital at that time, what was the appearance of your toe or toes?

A. They told me to continue with this medicine.

Q. Is that all?

A. Yes, sir; and they pulled the rest of my teeth out.

Q. Did they pull any teeth out on the first trip?

A. Yes, sir.

Q. Was it the same doctor both times?

A. The major—yes, sir.

Q. Who was he?

A. I don't know.

Q. You don't know, but he was a major, was he?

A. Yes, sir.

Q. Was he the only doctor there that saw you?

A. Yes, sir; he was the only doctor that seen my foot, and then the dentist took care of my teeth.

Q. That, then, would be the 13th or 14th, would it?

A. Yes, sir.

Q. Did he give you any more medicine?

A. No, sir; he told me it would be all right.

Q. Did you report to anybody when you went back that time?

A. Yes, sir.

Q. Did you get a certificate to go that time?

A. No, sir.

[fol. 53] Q. You went on the same certificate?

A. The mate told me, the first mate, to use my discharge, which I did.

Q. And when you came back, did you continue on your watches?

A. Yes, sir.

Q. When did you next go to any hospital?

A. After we left Baltimore, as soon as we arrived in Philadelphia, I got a hospital ticket off the first mate. He got that from the captain and gave it to me, and I went immediately to the out-patient department in Philadelphia, and they duplicated this medicine or gave me some more medicine in another bottle, and they put me through an examination there.

Q. Did they take a blood test?

A. They took a blood test, and a urinalysis, and examined me all over and told me it was all right—"This medicine will take care of you."

Q. Was it the same kind of medicine that they had given you in Baltimore?

A. It was a different color.

Q. It was a different color?

A. Yes, sir.

Q. Did they tell you to stop taking the medicine you got at the Baltimore Hospital?

A. No; they told me to continue.

Q. To use both?

A. Yes, sir.

Q. And you used both on your toes?

A. Yes, sir.

Q. At Baltimore did they also tell you if you used that med-cine, you would be all right?

[fol. 54] A. They told me it was all right; to go ahead with my work.

Q. Then, you went then to the Philadelphia Hospital at about the latter part of February?

A. Yes, sir; I think it was.

Q. Soon after you arrived here from Baltimore?

A. A day or two.

Q. What hospital is that in Philadelphia?

A. The United States Public Health Out-Patient.

Q. That is St. Agnes?

A. No; the out-patient department.

Q. Where is it?

A. On Chestnut Street.

Q. Whereabouts—Third Street?

A. Between Second and Third.

Q. And you did continue your watches when you went back?

A. Yes, sir.

Q. And how long did you continue those watches?

A. Until I was taken off the ship at the Panama Canal.

Q. And you stood all your watches until you actually went off the ship in the Panama Canal, is that right?

A. Yes, sir.

Q. Did you ask to be relieved by anybody?

A. No; I did not.

Q. When you came up from Baltimore to Philadelphia in the latter part of February, you were on Coastwise articles, were you?

A. I didn't sign any articles until we left Baltimore.

Q. You didn't sign any articles until you got to Philadelphia?

A. Philadelphia.

[fol. 55] Q. When was that? How long after you got to Philadelphia?

A. A couple of days after, I think it was.

Q. Was that before or after you went to the hospital, the Public Health Service?

A. After I went to the hospital.

Q. After you went there, you signed articles for an intercoastal voyage, did you?

A. Yes, sir.

Q. That was around February 28th or 29th?

A. Maybe March 1st—I don't know which it was.

Q. How long did you continue using this medicine on your toe?

A. Until it was empty.

Q. How long would you say that was?

A. Well, that was out of Philadelphia. I think it was maybe two or three days out of Philadelphia.

Q. And then you had no more medicine?

A. No more medicine. I went to the steward and he treated my foot.

Q. What did he do?

A. He washed it with some kind of solution, and put some kind of salve on there, and wrapped it up.

Q. Bandaged it?

A. Yes, sir.

Q. Did he do that regularly?

A. Every morning he told me to come there. When I came off watch at night, I went in and woke him up several times.

Q. Then, he washed it out and put on some of this salve?

A. Yes, sir.

[fol. 56] Q. Did that continue until you got to the Panama Canal?

A. Yes, sir.

Q. At how many ports did you stop between Philadelphia and the Canal?

A. Panama was our first stop.

Q. That was the first one?

A. Yes, sir.

Q. When did you get there?

A. On the night of the 11th, about eight or nine o'clock at night.

Q. The 11th of what?

A. The 11th of March.

Q. That was about eight o'clock at night?

A. Yes, sir.

Q. How long did you stay there?

A. Between seven and eight in the morning. I don't know the exact hour. I was on watch.

Q. Then what did you do?

A. As soon as we arrived at the Canal, at three o'clock in the afternoon, on the day of arrival——

Q. No; I am asking you, after you left Colon, where did the ship go to?

A. I went to the captain——

Q. Where did the ship go to from Colon?

Mr. Freedman: I object. He has answered your question. Read the question.

(Question read.)

[fol. 57] The Court: He may complete his answer to the question: "Then what did you do?" if he has anything more to say.

The Witness: As soon as I come off watch, when the ship was proceeding, another ship had to be helped through the first lock. I went to the captain again. I said, "Captain, you didn't get me that doctor you promised me." He says, "You will get your doctor."

By Mr. Bull:

Q. Now, where did the ship go to from Colon?

A. Through a lock.

Q. What was the next town it touched?

A. That I couldn't say.

Q. Did you go off the ship before you came to another port?

A. No, sir; I did not.

Q. Don't you know, then, what was the next port you came to?

A. The only place that I know, where I was taken of-, was the Peter Miguel locks.

Q. Is there a port there?

A. There's a lock there.

Q. Yes; but is there a port there?

A. I don't know just what you mean by "port".

Q. Is there any town there?

A. I don't know. There are soldiers there.

Q. There are what?

A. Soldiers there.

Q. Is there any town at the first lock you went through?

A. The town, when you tie up at the dock at Colon——

Q. Yes. I am talking after you left Colon. You said you went through the first lock. Now, you went on through a second lock?

[fol. 58] A. If I am not mistaken, if I am right; I don't know; I am not well acquainted with the locks down there, but I think the lock is in Colon.

Q. The lock is in Colon?

A. The first lock.

Q. How long did it take you to get from Colon until you got to this lock?

A. I come off at eight o'clock. We were through the first lock. It was between twelve and one when the doctor came on the ship.

Q. When was it, morning or afternoon?

A. Afternoon.

Q. So, you were through the first lock?

A. Yes, sir.

Q. And that is when you came off watch?

A. Yes, sir.

Q. You were through there?

A. Yes, sir.

Q. Just got through?

A. Yes, sir.

Q. You got to the next lock at twelve or one that afternoon?

A. I think there was another lock we went through.

Q. Well, now, how many locks did you go through?

A. Three locks.

Q. When did you get to the second lock?

A. I don't know the name of it, sir.

Q. You don't know that?

A. No, sir; I don't.

Q. Was there a town there?

[fol. 59] A. There's a few houses there. It's all Government property. I don't know. I can't be sure to say those things.

Q. Do you know the name of the third lock?

A. Peter Miguel lock, if I am not mistaken. That's where I was taken off.

Q. That is where you were taken off?

A. Yes, sir.

Q. Then the doctor come on the ship?

A. Yes, sir.

Q. Did he look at your foot on the ship?

A. Absolutely.

Q. And it was after he looked at your foot that you went ashore?

A. They took me ashore. They had to help me down the gangplank, and took me in an ambulance and drove me to the hospital. I didn't go ashore; they took me ashore.

Q. Who was that doctor?

A. I couldn't tell you his name. I never met the man before.

Q. He was brought on the ship, was he?

A. Yes, sir.

Q. Did he go to the hospital with you?

A. He rode in the ambulance for quite a ways to some town, and he got off at his house, and the ambulance driver took me to the hospital.

Q. And this doctor that came on board suggested that you be taken off and taken to the hospital?

A. Yes, sir.

Q. And that's the Gorgas Hospital, a Government Hospital, is it?

[fol. 60] A. Yes, sir.

Q. And while you were there at the Gorgas Hospital, what treatment did they give you?

A. When I first entered the hospital, they immediately gave me a bath, and washed my foot out with some kind of medicated solution, and then they put a big bandage on it, and they washed this bandage with a solution—they gave me a bottle of it—and they put my foot under an electric light. It was covered with a canvas, and my foot was in there, and I had to keep that foot wet. They told me to keep it under there, and let the steam come out. They wanted to keep it hot. It was a kind of roaring.

Q. I am asking you what they did.

A. That's what they did until about the 27th of March, and then they operated on me and removed a little toe from my right foot.

Q. So, from the 12th of March until the 27th, all they did was to give you this hot treatment and dressing, is that it?

A. Yes, sir.

Q. Did they also take blood tests there?

A. Yes, sir.

Q. Did they tell you what you had from those blood tests?

A. No, sir; they did not. They never tell you.

Q. After the 27th, when you say they amputated your little toe, what treatment did they give you then?

A. They continued to pack this hole that was left in my foot with some kind of medical gauze every morning, and wrap my foot up, and about—oh, I would say, maybe ten days later, they took the stitches off the side where it was operated on—they had some stitches in there—they took them out, but they still continued packing this hole.

[fol. 61] Q. Was that one toe or more than one?

A. That was just one toe, but it had left a big hole in it.

Q. Then, you stayed there for about a month with that treatment, is that right?

A. I stayed there until May 4th.

Q. May 4th?

A. Yes, sir.

Q. You left on the "Alamar"?

A. Yes, sir.

Q. And you were brought on the "Alamar" up to New York, is that right?

A. Yes, sir.

Q. During that same period, you were getting the same treatment, this dressing every day?

A. While I was in the hospital?

Q. Yes.

A. But not aboard the ship.

Q. I say, while you were in the hospital you were getting the same treatment?

Mr. Freedman: In what hospital?

Mr. Bull: At Gorgas.

The Witness: At Gorgas.

By Mr. Bull:

Q. When you left there, they told you to continue to dress it and not let anybody on the ship take any bandages off; is that what you testified?

A. They told me not to let anybody remove that bandage off that foot until I arrived in New York.

[fol. 62] Q. And did you do that?

A. Yes, sir.

Q. And did they tell you that you should come to New York?

A. The agent had some arrangement for me to make this boat, and I asked the doctor if it was all right, and he said it was O. K. He said, "We do that lots of times, because this isn't a Marine Hospital."

Q. It was at their suggestion that you got on the "Alamar"?

A. The agent made the suggestion to me and the doctor, and he had made some arrangements for my release at the hospital, and he came there—if I am not mistaken, I think it was on a Saturday morning.

Q. Who suggested that you come to New York.

Mr. Freedman: Who is "who"?

Mr. Bull: The hospital.

The Witness: The agent made the suggestion.

By Mr. Bull:

Q. The agent of what?

A. The agent of the company.

Q. It was not the doctor in the hospital?

A. No, sir; it was the agent. I asked the doctor if it was all right, and he said, "Yes", it was all right; and then he gave me the orders not to let none of the crew touch this foot.

Q. Who was this agent you say that suggested that you come up?

A. Mr. Stapleton, I think was his name.

Q. He was the agent for the steamship company?

A. He was working for the agents. I forget the agents' name right offhand.

Q. What did he say to you? What was the suggestion about your coming to New York?

[fol. 63] A. He told me about this ship coming through the following week, and I says, well, if it would be all right, I would just as soon go, because I had no friends and nobody in the Canal. He was the only one that came to see me.

Q. Did you want to come up to New York or didn't you?

A. With their permission: yes.

Q. When you got to New York, you went to Ellis Island, is that right?

A. Yes, sir.

Q. And you were brought up to New York free of charge, weren't you?

A. Yes, sir.

Q. And at the Ellis Island Hospital they continued to dress it, did they?

A. Yes, sir.

Q. With the same kind of dressings that had been used before?

A. No, sir.

Q. Different kinds?

A. Yes, sir.

Q. Did they ever tell you there what was wrong?

A. No, sir.

Q. Did they take blood tests?

A. Yes, sir; numerous times.

Q. At the Ellis Island Hospital?

A. Yes, sir.

Q. And that continued until they amputated the other toe, is that right?

A. They amputated the stump of the little toe first, and then the second toe, and operated on the side of my right foot.

[fol. 64] Q. And that continued until they operated and took a part of your lower limb, is that right?

A. No, sir. After that they put me in what they call the hot box and they injected several different kinds of medicines and solutions into my arms.

Q. Now, during that period do you recall the representatives of the steamship company who used to come and call on you now and then?

A. Every week.

Q. And they used to give you money?

A. $5 a week.

Q. $5 a week?

A. Yes, sir.

Q. Is that all that they gave you?

A. No, sir.

Q. Then, how much did they give you?

A. That was in the Ellis Island Hospital.

Q. How much did they give you?

A. That I couldn't tell you off hand. I never figured it out myself.

Q. They used to ask you to receipt for the payments?

A. Yes, sir.

Q. That is your signature (indicating)?

A. Yes, sir.

Mr. Bull: I will offer these. I think I had better staple them together and put them in as one exhibit, because there is quite a batch of them here—as Respondent's Exhibit 1.

[fol. 65] The Court: What is the total?

Mr. Bull: $487 for a period of a little over a year. It runs from June 14, 1935 to March 10, 1936. It is not quite a year. $487 in all.

Mr. Freedman: It is agreed that this amount has been paid to the libellant as it states, on account of maintenance and personal injury claim.

By Mr. Bull:

Q. Now, a number of those were paid to you while you were at Ellis Island—those payments—were they not?

A. Sir?

Q. Some of those payments were made while you were at the Ellis Island Marine Hospital?

A. Yes, sir.

Q. And at the Stapleton Marine Hospital?

A. Yes, sir.

Q. And some were paid to you at the home of your sister-in-law in the Bronx, New York City?

A. Yes, sir.

Q. And some of them were paid to you at the office of the steamship company when you went down there and got them?

A. Yes, sir.

Q. Now, during that time you say that you were seeing a representative or representatives of the steamship company every week or so?

A. Yes, sir.

Q. Sometimes more than once a week?

A. And he told me any time——

Q. Just a minute. Were you seeing them more than once a week?

[fol. 66] A. Every time I went to the hospital, I had to stop in there; they told me to.

Q. Every time that you went to the hospital?

A. Yes, sir.

Q. You mean, after you had stopped being an in-patient?

A. Well, I was an out-patient; yes, sir.

Q. While you were an in-patient you used to see someone about once a week?

A. Practically every week.

Q. During that time didn't you discuss with somebody your injury?

A. No, sir.

Q. Did you ask for anything they didn't give you?

A. Anything I asked for; they would give me anything. They said, "Don't see no attorney."

Q. Did you ask for anything they didn't give you? That is what I asked.

A. No, sir: I didn't—only one time I went to the office and asked Mr. Sommers as to how about my trip's wages. He says, "you can sign clear right now if you want to."

Q. Didn't you have with Mr. Sommers or Mr. Barron or anybody a discussion about your injuries?

A. No, sir. They tried to get me to, but I wouldn't make no statement.

Q. Didn't discuss them at all?

A. No, sir.

Q. You didn't tell how, where, or why you got them?

A. No, sir.

Q. You refused to do that?

[fol. 67] A. Yes, sir. I told them when I got out I would sign papers—when I got back on the ship.

Q. You refused to tell them how it happened?

A. Yes, sir.

Q. Didn't you say you didn't know how it happened?

A. No, sir.

Q. You didn't tell anybody that?

A. No, sir.

Q. All this time, you say, they were doing everything you asked them to do?

A. Yes, sir.

Q. Did you ask to have a specialist come in and examine you?

A. Yes, sir.

Q. Now, when was that?

A. Sometime either the latter part of August or early in September.

Q. The latter part of August or early in September?

A. Yes, sir.

Q. 1935—last year?

A. Yes, sir.

Q. And did they do it?

A. Yes, sir.

Q. They complied with your request and had a specialist go there?

A. Yes, sir.

Q. And did he examine you?

A. Yes, sir.

Q. Where was that?

A. At Stapleton, Staten Island.

Q. Did the Marine Hospital authorities agree or approve of that?

[fol. 68] Mr. Freedman: That is objected to. He wouldn't know if the Marine Hospital authorities agreed or approved of it.

A. They didn't tell me.

By Mr. Bull:

Q. Were any of the Marine Hospital doctors there at the time this doctor examined you?

A. Three of them.

Q. Did they take any part in that examination?

A. They just stood by and this doctor took some kind of a record; I don't know what it was.

Q. There were three doctors at the hospital and this specialist that the steamship company sent over there?

A. They were at my bedside, and they walked out, and left him there.

Q. Do you remember who this specialist was?

A. Dr. Spaulding.

Q. Do you know who he is?

A. No, sir; I do not.

Q. That was, in fact, during the latter part of August, 1935, wasn't it?

A. I couldn't say exactly the date. I was too much in agony really to talk to anybody.

Q. Now, didn't you talk to them at all?

A. When they unbandaged my foot, I couldn't hold it. It was just jumping like that (indicating), and it was all broken up on the top. There was a hole in my foot, and you could drop an egg in it and you couldn't see it, if you dropped an egg in.

Q. Didn't you talk to them at all?

[fol. 69] Mr. Freedman: Talk to whom?

By Mr. Bull:

Q. To the doctor who examined you?

A. I really don't know whether I did or not. I was under the influence of dope most of the time.

Q. You don't remember whether Dr. Spaulding asked how this happened?

A. He asked me questions, but I couldn't answer.

Q. You say you didn't answer?

A. Not to my recollection.

Q. If you told him anything at that time, you didn't know what you were talking about?

A. I was under the influence of dope. I didn't know what I was doing half of the time.

Q. I am asking you, is that why you didn't know what you were doing? You didn't know whether it was true or not?

A. I didn't know. I couldn't tell him anything. The doctors would have to tell him that. I didn't know really what was the matter with my foot.

Q. Did you tell him anything?

A. I don't recollect.

Q. You don't recollect?

A. No.

Q. If you told him anything, would you say that was wrong or that was right?

Mr. Freedman: That is objected to. The man doesn't know whether he told him anything or not.

The Court: You will have to elicit the facts.

[fol. 70] By Mr. Bull:

Q. You do admit, however, that the representatives of the steamship company did ask you questions about it?

A. No, sir.

Q. You don't remember that either?

A. They asked me several questions, and I refused to answer them.

The Court: Questions about what—about his injury?

Mr. Bull: Yes, sir.

The Court: And his condition?

Mr. Bull: Right—what caused it—how it started.

The Court: Make it clear.

By Mr. Bull:

Q. Did they ask you anything about how your injury or illness commenced?

A. To the best of my recollection, Mr. Barron came to my bedside several times, and he got to asking questions, and I couldn't answer. He kept on writing and he said, "Will you sign this?" And I said, "No; I am in too much agony. Keep away from me." I couldn't talk to the man. The agony I was going through was terrible.

Q. You don't say, however, that during this time you were under the influence of dope?

A. I was under the influence of dope from the time they got me in Ellis Island. They used nothing but dope, dope, dope; that's all they give me, and treating my foot. They had to do something. The agony of the pain I was suffering was so terrific. My own relatives came down there, and I asked them please to go home and leave me alone. I begged them to leave me alone.

[fol. 71] Q. Finished?

A. Yes, sir.

Q. What is this dope you are talking about?

A. Morphine of all descriptions. They gave me morphine injections. My arms were full (indicating), where they used to put injections in my arms. Every hour they give them to me.

Q. How do you know they used morphine?

A. They told me. The nurse told me. Every four hours they used to come up and give it to me. As soon as this dope died out, it was just like a million bugs in there eating me, eating me up. It was the worst agony I have gone through. I wouldn't go through it again for a million dollars; I wouldn't go through it again.

Q. You have made that speech before. You don't need to go through it again.

A. Well, it's the truth.

Q. You had more morphine when Dr. Spaulding was there?

A. Every four hours they gave it to me.

Q. I asked you, you had more morphine when Dr. Spaulding was there?

Mr. Freedman: This has been hashed and rehashed. If counsel has anything in mind, I wish he would state it.

The Court: I was going to ask; Aren't we prolonging this inquiry?

By Mr. Bull:

Q. This thing you spoke of in the engine room, that has been called a retorter—is that the name?

A. Retarder or retorter.

Q. Either one is right?

A. Either one is all I know them by.

[fol. 72] Q. Now, what is a retorter?

A. A retarder is a piece of metal about four inches wide. It fits inside of a four inch tube, and it's like a spiral stairway. It's about one-eighth of an inch thick and it's between five and seven feet long.

Q. How thick?

A. About one-eighth of an inch.

Q. What is it used for?

A. It is put in these tubes, so that it retards the flame; so the flame can't got right through. When a fire is going through there, it heats the water.

Q. What is this tube that they go through? Let us understand just what they are used for and where they are put.

A. In the breeching of the boiler, which is over part of the boiler.

Q. The boiler fire box?

A. The fire box is a different thing altogether.

Mr. Freedman: May it please the Court, I do not want to clutter up the record with a lot of objections, but I think this is too remote.

The Court: I know, but I think we ought to know what it is. He referred to it as a retorter, on whatever the name is.

By Mr. Bull:

Q. And their purpose is to retard the gases, is that it?

A. That I couldn't tell you. That's an engineer's question.

Q. They are a flexible steel piece that is put in there in a spiral shape, so the gases will not go through and out in a hurry, but they will get the most benefit out of those gases, is that it?

[fol. 73] A. Get the most benefit out of those gases.

Q. How often do they take them out?

A. Every time they clean the boilers. They clean them once on the east coast and once on the west coast.

Q. Once on the east coast?

A. Yes, sir.

Q. This was in the fire room?

A. Yes, sir.

Q. How did you get in there?

A. Through the engine room. It's through a companionway between the two boilers, and then the fire room entrance.

Q. And that passage-way is between two boilers, is that right?

A. Yes, sir.

Q. Which two?

A. The starboard and center.

The Court: Let me inquire of counsel, do you have in mind calling other witnesses this afternoon?

Mr. Freedman: Yes, sir; they are all in court now.

The Court: You had better call them now then. Call them.

(Witness withdrawn.)

Maurice Seltzer, having been duly sworn, was examined and testified as follows:

By Mr. Freedman:

Q. You are a practicing physician in the City of Philadelphia, Doctor?

A. I am.

Q. What is your address?

A. 7967 Castor Avenue.

[fol. 74] Q. And how long have you been in practice?

A. Ten years.

Q. From what school did you graduate?

A. University of Pennsylvania, 1926.

Q. What affiliations as a physician have you had or do you have now?

A. Interne in the Abington Memorial Hospital. I spent two years at the Philadelphia Hospital for Mental Diseases. Instructor in neurology in the University of Pennsylvania and Temple University, and at the present time am physician to the Episcopal Hospital and Jewish Hospital. I am a surgeon for the Pennsylvania National Guard and the Fairmount Park Commission.

Q. Do you specialize in any particular branch of medicine and surgery?

A. I do general practice, with special work in internal medicine.

Q. Have you examined Charles W. Taylor, the libellant in this case?

A. I have.

Q. When and where?

A. On March 18th and April 20th, at my office.

Q. Did he give you a history of his case?

A. Yes.

By Mr. Bull:

Q. What year was that?

A. 1936.

By Mr. Freedman:

Q. What history did he give you?

[fol. 75] Mr. Bull: I object to that, if your Honor pleases. It doesn't make a particle of difference.

Mr. Freedman: I will withdraw the question.

By Mr. Freedman:

Q. Have you read the clinical record, abstracts from the clinical record of this man?

Mr. Bull: I object to that.

Mr. Freedman: Just a minute. I am not through yet.

By Mr. Freedman:

Q. From the Baltimore Hospital and the Philadelphia Hospital and the Gorgas Hospital Memorial and the Staten Island Marine Hospital?

Mr. Bull: I object to that on the ground that it is all hearsay.

The Court: Of course, it is and so is the history of the case.

By the Court:

Q. Did you, Doctor?
A. I did.
Q. Did you examine him?
A. I did.

The Court: All right.

By Mr. Freedman:

Q. From your reading of these reports, and your own examination, and from the history of the case, what is your conclusion as to his medical diagnosis?

Mr. Bull: I object to his basing his opinion on what he has read.

The Court: He has stated that he examined the patient.

Mr. Freedman: Yes, sir.

[fol. 76] Mr. Bull: Is his opinion based on what he found himself or what he found in somebody else's report?

The Court: Doctors instinctively make a report after they get the diagnosis.

Mr. Bull: It seems to me it is important to know what he bases his opinion on.

The Court: You had better wait until the cross-examination. As I understand the doctor, he examined this patient, got his history, and examined the records of some or all these hospitals, and on that he is giving his opinion as to what?

Mr. Freedman: As to the medical diagnosis of this man, as to what this man——

The Court: Is that objected to?

Mr. Bull: Yes, your Honor.

(Objection overruled. Exception noted for respondent by direction of the Court.)

The Witness: My diagnosis of his case was that he sustained an injury in the right fifth toe, which precipitated a train of events resulting in Buerger's disease which, in turn, resulted in the amputation of his right foot.

By the Court:

Q. Doctor, what is Buerger's disease?

A. Buerger's disease is apparently an inflammatory condition of the blood vessels, especially involving the larger blood vessels and especially the arteries. After the disease results, there is a blood clot formed which sooner or later becomes organized so that the opening becomes occluded. This interferes with the circulation of the part supplied by this blood vessel, so that either pain or ulceration or gangrene may result. The medical name is thrombo angiitis obliterans.

[fol. 77] By Mr. Freedman:

Q. Will you state upon what you based your findings?

A. My findings are based on the history of the case and the findings—physical findings noted at Stapleton and the pathological report taken from a section of his blood vessel after amputation.

Q. And now, Doctor, can you briefly describe the nature, the symptoms and the cause of Buerger's disease?

A. I have just described the nature of it. The symptoms are usually pain, especially pain on walking. The foot when pendant takes on a bluish appearance. When elevated it looks almost deathlike and then, after a variable time, in many of these cases ulceration and gangrene may develop.

Q. Doctor, what is the cause of Buerger's disease?

A. The exact cause of Buerger's disease is unknown.

Q. Do the authorities support your view?

A. They do.

Q. Can trauma act as a precipitating agent of Buerger's disease?

A. In my opinion, trauma can act as a precipitating agent.

Q. Can you name any authorities supporting your view?

A. I can name two authorities: Dr. De Takats in an article published in the Journal of the American Medical Association April 27, 1935; and an article by Dr. Barber of the Mayo Clinic, in an article published in the Journal of the American Medical Association June 15, 1935; trauma is mentioned as a precipitating agent.

Q. Doctor, when, in your opinion, did Buerger's disease first become clinically recognizable in Taylor?

A. At Ellis Island. I don't know the exact date.

By the Court:

Q. Is this a blood disease?
[fol. 78] A. We don't know the cause of it.

Q. You don't know the cause of it?

A. No. It's an inflammatory condition of the blood vessels themselves—not in the blood.

Q. It is localized?

A. It is not localized. It may spread from one part of the body to another. It is localized for the time being.

Q. What I mean by "localized", it is an inflammation of the part, but it is not in the blood stream itself, or is it in the blood stream?

A. We don't know. It may spread to different parts of the body without any continuity.

By Mr. Freedman:

Q. Assuming that Charles W. Taylor, the libellant, struck his fifth right toe against a retarder on or about February 9, 1935, and that thereafter an inflammatory lesion set in and that he subsequently received numerous amputations of his toes, and finally the amputation of his right leg on September 26th, at which time a positive diagnosis of Buerger's disease was made, is it your professional opinion, Doctor, that the injury he received as the result of striking his fifth right toe against the retarder precipitated the train of events resulting in Buerger's disease and resulting in the amputation of his right leg?

Mr. Bull: I object to that.

The Court: I will have to sustain the objection to the question in that form, but you may ask him whether the diseased condition as found is consistent with the result of such an injury.

[fol. 79] Mr. Freedman: This is a hypothetical question which is based on the facts in this case, if your Honor pleases.

The Court: Yes; but you are asking him not for his surgical opinion but you are asking him for his judicial opinion. The doctor can tell us whether the condition which he found, and which he learned from the history of the case and from the hospital records, is or is not consistent with the receipt of the injury which has been described.

By Mr. Freedman:

Q. Will you give your answer to that question, Doctor, as it was put by the Judge?

A. Such an injury could precipitate a case of Buerger's disease.

Q. In your opinion, Doctor, did it cause it in this case?

Mr. Bull: I object to that.

The Court: That is open to the same objection as the question that was asked before. I think the doctor gave you a pretty clear answer to that question. He said that it could cause it.

Mr. Freedman: I will withdraw the question.

By Mr. Freedman:

Q. In your opinion, Doctor, what did cause the Buerger's disease and the amputation of this man's leg?

Mr. Bull: I object to that.

The Court: That is open to the same objection. You asked him to determine whether or not this did cause it and the doctor told you that it would cause it. There may have been a half a dozen things happen—we don't know.

[fol. 80] Mr. Freedman: The witness had the history of the case and the facts in the case, and from those facts he has a right to express an opinion as to whether or not the whole thing, which terminated in the amputation, was caused by the original stubbing of the foot.

The Court: The doctor can answer any surgical question that you may ask him, but a jury's opinion will have to be given by a jury and not by the witness.

(Exception noted for libellant by direction of the Court)

By Mr. Freedman:

Q. Doctor, in your opinion, is Taylor cured of this Buerger's disease?

A. I don't care to discuss his prognosis and this question of cure in front of Mr. Taylor.

The Court: We can't order him to leave the room but I understand——

(Discussion off the record.)

The Witness: In my opinion, this disease is incurable.

By the Court:

Q. Let me ask you, Doctor, is this Buerger's disease of any venereal complications?

A. No, sir; none at all.

By Mr. Freedman:

Q. On what do you base your opinion, Doctor?

A. I base my opinion on my own experience in cases I have had and the studies of different authors.

Q. In your opinion, will Taylor require medical care in the future?

A. Taylor will require extended medical care in the future.

[fol. 81] Q. For how long?

A. All his life.

Q. Are relapses common in Buerger's disease.

A. Relapses are very common in Buerger's disease.

Q. Do the authorities support your opinion?

A. They do.

Q. What, in your opinion, would be the result of a further relapse?

A. In the case of a further relapse, the patient might either suffer discomfort or pain or some of the atropic disorders, such as ulceration or gangrene.

Q. Would it spread through his other limbs?

A. In a number of cases various limbs become involved, one after the other.

Q. What do you mean by "involved"?

A. Show the same symptoms that impair circulation, and possibly ulcerations and gangrene.

Q. With necessary amputation?

A. With amputation if gangrene becomes incurable?

Q. In your opinion, can these cases prove fatal?

A. These cases can prove fatal by reason of the operation or amputation or because of the interposition of some disease, such as pneumonia, due to the patient's weakened condition.

Q. Should a relapse occur, Doctor, will he require specialized care?

A. He will require specialized care if a relapse occurs.

Q. What sort of care?

A. Probably hospitalization, intensive physio-therapy, and surgery if such becomes necessary.

Q. Doctor, you stated that pain is one of the symptoms of [fol. 82] Buerger's disease. Will you describe the pain which accompanies Buerger's disease?

A. Buerger's disease itself during the period of certain disturbances is manifested by—manifests itself by an intermittent type of pain, especially on walking. Apparently there is insufficient circulation to take care of the muscles used. Later, as the ulcerations and other disturbances, such as gangrene, come in, we have the very excruciating pain which comes with this type of complication.

Q. Is that pain very severe?

A. It is probably one of the most excruciating types of pain we have, judging by the symptoms of the people who have had it.

Cross-examination.

By Mr. Bull:

Q. What did you say your specialty was, Doctor?

A. I do general practice, but I am doing special work in internal medicine.

Q. Internal medicine?

A. Yes; internal medicine.

Q. Would that include Buerger's disease?

A. Whatever cases that I come across.

Q. How many cases of Buerger's disease have you had?

A. I have had several cases in the past. I cannot remember exactly how many. I have one active case right at the present time. During my stay in New York I was allowed the privilege of studying under Prof. Buerger himself, in 1927.

Q. How long were you in New York?

A. I was there about four to six weeks, in 1927.

[fol. 83] Q. Now, you examined Taylor in 1936, you say?

A. I did.

Q. At that time he had his artificial limb?

A. He did.

Q. When you testified as to when the Buerger's disease became apparent, you were not doing that on anything that you noticed in your examination but on what you read somewhere else?

A. Entriely from the clinical record.

Q. And was your diagnosis of Buerger's disease also based entirely upon the clinical record of somebody else?

A. My diagnosis was based especially on the clinical record at Stapleton, which showed the physical signs and the pathology, which is rather a clear-cut picture.

Q. At the time you examined him you were unable to determine that just from examining him?

A. Not at that time.

Q. And at this time you couldn't do it without the record and what went before?

A. Since then he has showed no signs of any consequence so far as the active stage of Buerger's disease is concerned.

Q. So, from an examination of him, as distinguished from the records that somebody else made, you couldn't diagnose it?

A. Not from an examination of him at the present.

Q. Nor when you saw him in March?

A. Well, we have to base our diagnosis entirely on the history, as to what happened in connection with the loss of his leg.

Q. Do you have the records that you based your diagnosis on?

A. The records, I believe, are in court.

Mr. Bull: May I have them, please?

(Mr. Freedman here produced certain papers.)

[fol. 84] By Mr. Bull:

Q. Doctor, when you stated on your direct examination about an injury to the fifth toe, you based that entirely on what either Taylor told you or you had seen in an abstract from some other clinical record?

A. Entirely on a history.

Q. Of course, you couldn't tell from seeing Taylor then—that Buerger's disease might be precipitated by an accident such as Taylor said that he had?

A. Well, apparently Taylor had shown no symptoms or physical signs of the disease, and when he sustained an injury, almost immediately after that there is a continuous train of events that resulted in the clear-cut establishment of the disease, and my only conclusion was that the injury precipitated this course of events.

Q. You say that because Taylor told you that he had nothing before that?

A. I say this, in view of the history.

Q. The history that you got from him?

A. Yes, and our knowledge that these cases can be incited by injury.

Q. Have you ever had cases that you have treated yourself, your own cases, that you know had been incited by injury?

A. I have one right at the present.

Q. Do you know that it was?

A. I know that it was.

Q. And do you know that the man did not have any Buerger's disease before the injury?

A. I have treated him for sometime, and I was surprised to find that he had all the signs of Buerger's disease. It has not progressed to gangrene, however.

[fol. 85] Q. Could you tell before that he had Buerger's disease?

A. I couldn't tell before.

Q. How long does it take for Buerger's disease to show up, to determine what it is?

A. It's impossible to answer that. We have cases that go very rapidly and we have cases which are extremely chronic; that is, they are chronic in the sense that it takes a long time before the disease comes to the surface.

Q. In other words, it is in the system and could not be discovered by medical science for some time?

A. In the sense that it is not recognizable clinically, I would say it has not been discovered.

Q. Can it be discovered before, Doctor, by any manifestations?

A. All we can say is that if the patient has the physical signs or symptoms of the disease that he is probably suffering from Buerger's disease. The only absolute diagnosis is to remove a portion of his blood vessel and put it underneath the microscope.

Q. Then you can tell?

A. Then we can tell pretty accurately. The picture is very characteristic.

Q. But you would not be able to tell whether he had Buerger's disease, in the first place?

A. It is usually not done until after an amputation.

Q. When you say that it might be precipitated by an injury, by that do you mean that it might be there and become apparent after the injury?

A. Well, we don't know whether the disease is there; we have no way of proving it; that is, any laboratory tests or physical symptoms that will absolutely show us it is there, but if we have a person who is entirely well and if he [fol. 86] sustains an injury and he develops Buerger's disease afterwards, we would presume that it is the result of the injury, because it is in the inciting event.

Q. By "inciting" you mean speeds it up?

A. No; the thing that starts it.

Q. Is it due to a germ or something else?

A. We don't know the cause of it.

Q. When you put it under the microscope, what do you ascertain?

A. We put the section of a blood vessel under the microscope and find a characteristic clot. I can give you a medical description, but I don't think it would mean anything.

Q. Probably not.

A. Continue?

Q. Yes.

— It is a clot that is organized and consists mostly of vascular connected tissue. It usually has totally obliterated the lumen of a blood vessel. At times, as in this case, it may become re-canalized. The surrounding tissues also show signs of fibratic infiltration.

Q. How long does it take to get in this condition, where you can ascertain it by microscopical examination?

A. How long does it take?

Q. Yes; how soon does it develop?

A. If we could take a portion of a blood vessel while the patient still had his leg, we probably would find it as we find physical science, but usually it's only after the amputation that we see that picture.

Q. There are a great many people who have written about Buerger's disease.

A. Well, I suppose there are.

Q. Are these the only two cases that you know of where the doctors have stated that in their opinion it may be traumatic?

[fol. 87] A. Dr. Buerger, in his own book, describes the case in which apparently the disease came on after an injury. He describes one case.

Q. Does he say that the injury was the cause of it?

A. He says, following a trauma the atropic ulcer resulted.

Q. But does he express an opinion as to whether or not——

A. He expresses an opinion as to the direct word "inciting", but these other two references, which are based on two other cases, I think are sufficiently convincing for one to reach that conclusion.

Q. But I think you will agree with me that there are a great many of them that state to the contrary?

A. I have never seen any articles to the contrary.

Q. You have not?

A. No, sir.

Q. Doctor, is that one of the abstracts that you base your opinion on (indicating)?

A. It is.

Q. That is what you used as an abstract from the clinical record at the Baltimore Marine Hospital in February, 1935, is it?

A. That's right.

Q. And that was the first one that was given to you?

A. Yes, sir.

Q. And did the diagnosis of ringworm have anything to do with your opinion that it was Buerger's disease?

A. I disagreed with the diagnosis of ringworm.

Q. How could you when you were not there, and this was all you had?

A. Because the only recognized method of making a diagnosis of ringworm is to take a scraping and examine it underneath the microscope, which will show the characteristic fungus.

[fol. 88] Q. Do you know if they did that?

A. There is nothing in that report.

Q. There is nothing to show that they didn't do it.

A. There is nothing to show that they did do it. I am entitled to my opinion: that, in my opinion, ringworm was probably a mistaken diagnosis.

Q. You say that as a matter of fact?

A. That is an opinion of my own.

Q. Yet you didn't see the man until a year after this?

A. Right.

Q. And also found the diagnosis of pyorrhea?

A. That's right.

Q. As having to do with Buerger's disease?

A. No, sir.

Q. Might pyorrhea go with Buerger's disease, running along with it?

A. I have no record of that.

Q. You have no record of that?

A. Of pyorrhea inciting Buerger's disease in any literature.

Q. Of course, at the time you saw him, his teeth were all out, weren't they?

A. Apparently.

Q. Does Buerger's disease affect the teeth?

A. Not as far as I can get any information on it.

Q. So, you don't know whether this diagnosis is right or wrong, either, is that right?

A. I am not questioning the diagnosis of the condition of his teeth. I am merely questioning the diagnosis of ringworm.

Q. This also states with respect to the condition of the patient on admission, "Patient complained of inflammatory lesion between fourth and fifth right toes." Did you base [fol. 89] you- opinion on that, as part of the history of the case?

A. I did. In fact, I thought that's what he had, was an inflammatory lesion, which was mistakenly called ringworm. Inflammatory lesion is not necessarily ringworm.

Q. So that you thought, did you, that on February 11, 1935, what he had was an inflammatory lesion between the fourth and fifth right toes, is that it?

A. That's right.

Q. Did you also at that time examine and base your opinion on a copy, what appears to be or purports to be a copy of an abstract of a clinical record at the Gorgas Hospital, Balboa Heights?

A. I did.

Q. You did?

A. Yes, sir.

Q. And I note that on that abstract it gives as the diagnosis "osteomyelitis chronic proximal phalange right fifth toe with draining sinus." Now, did you decide after examining him that it was chronic—that this also was a wrong diagnosis?

A. No, sir; I believe that was a proper diagnosis.

Q. That it was chronic osteomyelitis?

A. Chronic osteomyelitis means infection of the bone, and I believe what they saw there was an infection of that toe which involved not only the soft tissues but also the bone. How chronic it was, I couldn't tell.

Q. But, in forming your opinion, did you base it on the diagnosis of chronic osteomyelitis or on your opinion that that was a wrong diagnosis?

[fol. 90] A. I said nothing about it being a wrong diagnosis. I said the diagnosis was correct as far as the information they had at that time.

Q. Did you assume, then, it was chronic?

A. I don't know how chronic it could be. I am just taking their word, that they thought it probably existed for some time, but how long I don't know. Anything that may run after a few days can be called "chronic."

Q. Now, did you also note that the history of the illness or accident as elicited from the patient states that about February 25th, 1935, the right foot became sore, painful toes, and skin between fourth toe and little toe cracked; three days before admission to hospital right foot became swollen and very painful. Did you note that?

A. I noted that.

Q. And did you base your opinion on that?

A. I based my opinion on that and on the history that the patient gave me.

Q. More on this history than on the history he gave you?

A. I will say, in combination. I didn't know which was the more important.

Q. Did you also note that the Gorgas Hospital abstract stated, condition of patient upon discharge May 4, 1935, has improved, able to work in thirty days?

A. I did.

Q. And did you base your opinion at all on that?

A. Opinion of what?

Q. On their statement that on May 4th he was improved and would be able to work in thirty days—that would be early in June?

[fol. 91] A. I based no opinion as to prognosis. Subsequently the history showed otherwise.

Q. And did you also at that time examine an abstract or what purported to be an abstract from the clinical record at the Ellis Island Marine Hospital, which is dated March 19, 1936?

A. I did.

Q. Did you base your opinion in part on that?

A. I did.

Q. Did you note that that abstract stated that on August 7, 1935, the patient's condition was improved?

A. It says "unimproved."

Q. I am sorry. Unimproved. Thrombo angiitis obliterans is Buerger's disease?

A. Yes.

Q. And that is the first evidence from these records, clinical records, that you found of Buerger's disease, is it?

A. That's right—yes.

Q. And the date of that was August 7th, I suppose, 1935?

A. From the history, I can't tell when that diagnosis was made.

Q. So, did you base it more on this one that you did on the ones from the Gorgas Hospital and the one from the Baltimore Marine Hospital?

A. I based it mostly on the record from Stapleton and partially on this report here (indicating).

Q. But you stated on your direct examination that you formed an opinion that the Buerger's disease became apparent at Ellis Island.

A. That's right.

Q. And you based that particularly on this abstract from Ellis Island (indicating)?

[fol. 92] A. That's right.

Q. Now, did you also examine what purports to be an abstract from the clinical record at the Marine Hospital, Staten Island, New York, which is dated March 27, 1936?

A. That's right.

Q. And in doing that did you note that the condition of the patient upon admission as stated here: "This patient states that in February, 1935, he reported to the Marine Hospital, Philadelphia, with a small crack in base of the little toe, crack increased in size, and in March webbing split between fourth and fifth toes"—did you notice that?

A. That's right.

Q. And did you base your opinion in part on that?

A. I did.

Mr. Freedman: I ask counsel to state what he means when he says "your opinion?" Just exactly what does counsel mean by "your opinion"—opinion of what?

Mr. Bull: The witness has answered. He knows.

(Adjourned until Tuesday, June 16, 1936, at 10:00 o'clock a. m.)

CHARLES W. TAYLOR, Libellant,

v.

CALMAR STEAMSHIP COMPANY, Respondent

(Trial of cause resumed at ten o'clock a. m., Tuesday, June 16th, 1936, in the presence of the Court and counsel for the respective parties.)

[fol. 93] CHARLES W. TAYLOR, resumed.

By Mr. Bull:

Q. Mr. Taylor, were you just going on watch on the afternoon that you say the lights went out?

A. Yes, sir.

Q. And when you first went down into the engine room, what time was that, was that before or after four?

A. I was supposed to take over my duties to start at four o'clock.

Q. You went in the engine room at four?

A. That's when I went on watch.

Q. What did you do in the engine room before going into the fire room or the boiler room?

A. I had the pumps to oil, I had to take care of the water in the boiler.

Q. That was done in the engine room before you went into the boiler room?

A. Yes, sir.

Q. How long did that take you?

A. About three or four minutes.

Q. Three or four minutes?

A. Yes, sir.

Q. What were you going to do in the boiler room?

A. I had duties to perform in there, I got to take care of the steam, keep the fires going, and I have got to change the burners, clean the burners.

Q. Was there anyone else in the engine room at the time you were there?

A. No, sir.

Q. Wasn't there anybody there from the prior watch when you went down in the engine room?

[fol. 94] A. No, sir.

Q. Was there anybody in the boiler room?

A. No, sir.

Q. Were you on watch alone?

A. Yes, sir.

Q. How far is it from the engine room to the boiler room?

A. I never measured it, but I judge it would be between fifteen and twenty-five feet, that's just the length of the boilers.

Q. Is there a bulkhead between?

A. You have got to go through a companionway, you have got to duck your head and go down through a door there back of the boilers, before you can get in between the boilers, before you enter the boiler room.

Q. The door is in the bulkhead, is it?

A. Yes, sir.

Q. Then you go between the boilers for the length of the boilers, is that right?

A. Yes, sir.

Q. The boilers, however, are all in the boiler room?

A. Well, there's a part runs from the boiler room, and the back end of them where the water glasses are is in the engine room.

Q. Do you say it's about twenty-five feet from this door in the front of the boilers?

A. I couldn't say exactly.

Q. No, about.

A. I would say between fifteen and twenty-five feet.

Q. That's from the door to the front of the boilers?

A. From the time you go down the steps to leave from the engine room into the boiler room, it's somewheres in between fifteen and twenty-five feet, to the best of my [fol. 95] knowledge, I never measured it.

Q. And the steps you speak of, are they at the door?

A. You go down the steps, and then you turn to your right to go into the door, there's about five or six steps.

Q. Could you make a diagram—Just make it from your recollection.

A. I am not a very good drawer.

(The witness draws a diagram.)

Q. Will you put the letter "E" where the engine room is there?

A. (The witness complies.)

Q. And the letter "B" where the boiler room is?

A. (The witness complies.)

Q. And I see you have three things here, what are these, boilers?

A. Yes, sir.

Q. Will you mark those with an "X"?

A. (The witness complies.)

Q. And is this what you refer to as that passageway?

A. Yes.

Q. Will you mark that "P"?

A. (The witness complies.)

Q. And where is the door on there?

A. Right here (indicating).

Q. Will you just mark that slanting mark there and put a "D" right over it?

A. (The witness complies.)

Q. Now, will you mark on there where you say the retarders were?

A. Right in front here (indicating).

[fol. 96] Q. That is that uneven line you have drawn there in front of one of the boilers?

A. Yes.

Q. Will you mark an "R" on that?

A. (The witness complies.)

Q. And they were all right there?

A. Yes, sir.

Q. You said I think before that the boilers—that this passageway was the length of the boilers, and on this diagram you don't show the boilers as long as the passageway, is that right?

A. I can't draw. These boilers ran all the way through here like that (indicating), and the water glasses show up in here all the way through.

Q. So where you marked the "X" was merely the front of the boilers?

A. The front of the boilers.

Q. And the size of the passageway is the size of the boilers?

A. Yes.

Q. So that the lines you put down should not be there, are they one, these two lines?

A. This is like a platform, we walk on the platform.

Q. Between them?

A. Yes.

Q. How long did it take you to get from the engine room into the boiler room at this time?

A. I should just say a few seconds, just before I entered the boiler room.

Q. Where were you when you say the lights flickered?

A. Just about to enter the boiler room.

[fol. 97] Q. That is at the back of the boilers?

A. At the boiler room, just at the entrance.

Q. Do you mean at the beginning of that passageway, which you have marked with the letter "P"?

A. No, sir, right here (indicating). This is the entrance in the boiler room. You have got to come in here, you turn around and look that way to see how your steam is, your gauges is all there, and your pumps is over here. Your oil heater is over here, and your regulation valves is all over here.

Q. The boilers are almost all in the boiler room, aren't they?

A. Just the front of them.

Q. Just the front?

A. And the whole boiler room is all over here, that's the fire room.

Q. This passageway is really in the boiler room, isn't it, rather than in the engine room?

A. It starts from the engine room, you have got to come through in between the boilers to get into the boiler room.

Q. You say you were just about at the front of the boilers, at the end of the passageway when the lights flickered?

A. Yes, sir, just as I was entering in here to complete my duties in the fire hole, the lights flickered and went out.

Q. Had you stepped in here in front of the boilers, or were you back of the front of the boilers:

Mr. Freedman: I ask counsel to make some identification on the sketch there, when he says "in here".

The Court: What was the question?

(Question repeated.)

[fol. 98] Q. Had you stepped in front of the boilers, or were you back of the front of the boilers at the time you saw the lights flicker?

A. I was just about to enter the boiler room when the lights flickered and went out.

Q. Were you one step or two steps or three steps back?

A. To the best of my recollection I was just stepping in the boiler room when the lights flickered and went out, and that's when I stumbled over these retarders.

Q. When they did go out did you take any more steps?

A. One or two when I stumbled.

Q. You took one or two steps after that?

A. Yes.

Q. Did you take those one or two steps to your right or to your left or straight ahead?

A. To my left.

Q. You were going to look at the gauges, were you?

A. Absolutely, yes, sir.

Q. You didn't think you could see the gauges in the dark, did you?

A. It happened so quick that I couldn't stop myself.

Q. Did you slow up any when the lights went out and you took those two or three steps?

A. I stumbled.

Q. You said you took two or three steps after the lights went out.

Mr. Freedman: He didn't say that.

Q. How many steps did you take?

A. One or two steps.

Q. Did you slacken your pace when you took the one or two steps after the lights went out?

[fol. 99] A. I stumbled over the retarders, the lights just flickered and went out. When I stumbled I couldn't stop myself, it happened so quick, and it was a surprise to me, I didn't know what happened just for the minute.

Q. You didn't see any retarders there at that time, did you, it was dark?

A. I couldn't, the lights was out.

Q. It was dark, was it?

A. Absolutely.

Q. Had you seen any there before the lights went out?

A. I couldn't see when I am entering the boiler room, I couldn't see left of the passage.

Q. So you were not up far enough to see when the lights went out?

A. I am just entering the boiler room.

Q. I am trying to find out where you were, whether you saw, or wherever you were, you couldn't see before the lights went out?

A. Before the lights went out I could see.

Q. You could see where those retarders were?

A. No, sir, because they are at the left. You only can see in front of the entrance, you cannot see to the left of them boilers or the right, you cannot see even a gauge.

Q. What was it that obstructed your vision?

A. The boilers on both sides of me.

Q. What was on both sides?

A. The boilers.

Q. And that obstructed your vision except straight ahead of you, is that it?

A. That's it.

[fol. 100] Q. So that you had to turn to the left and go in front of these boilers to get over to where you say the retarders were, is that it?

A. No, sir, they are right in front of the passageway at the entrance to my left, right in my road.

Q. Why couldn't you see them?

A. I say, the lights went out.

Q. I know, but the lights were not out all the time you were walking through the passageway.

A. Just as I am entering the boiler room the lights flickered and went out, and I couldn't stop myself, it happened so quick.

Q. You testified a minute ago that these were in front of one of the boilers, and you couldn't see them because of the boilers, that you went in and you turned to your left and took a couple of steps before you came to them, is that right, or isn't it?

A. Just as I am entering the boiler room, when I am entering and just about to turn into the boiler room the lights flickered and went out. The first thing I got to do when I come on watch is to take my record of how much oil.

Q. What I am trying to find out is why you did not see these before the lights went out.

Mr. Freedman: The witness has already answered that about three times.

Mr. Bull: Three different stories.

Mr. Freedman: I beg to differ, I think he answered the same way every time.

Mr. Bull: I would like to find out what this man really claims.

[fol. 101] The Court: I don't understand that there is any question raised, no more than counsel made a comment, that's all. If you want to object, or make a motion, or anything, all right, but there is nothing before the Court.

Mr. Freedman: I don't want to clutter up the record with objections, I will withdraw my objection.

The Court: I didn't understand you were making any objection.

Mr. Freedman: I was not, but your Honor made a comment, but I do object to counsel's repetition questioning.

The Court: I will overrule the objection, and give the libellant an exception, because I will not interfere with the conduct of cross-examination. I take it for granted that counsel will not consume unnecessary time.

(Exception noted for libellant.)

Mr. Bull: Will you repeat the question?

(Question repeated.)

A. When I am in between the boilers, I only can see just about the width of my arm like that (indicating), and the boilers, they are along there, maybe fifteen or twenty-five feet long, and they are about, I would say, maybe twenty or twenty-five feet in diameter, and there's nothing ahead of me only this little passageway, companionway, and you have got to look straight ahead, and when you get to the end of it then you turn into the boiler room and then you can see.

By Mr. Wolff:

Q. To the left?
A. To the left or right.
Q. You turned to the left?
A. I turned to the left.

[fol. 102] By Mr. Bull:

Q. You say the lights went out before you turned to the left, though?

A. Yes, just as I am entering the boiler room the lights flickered and went out, and that's when I stumbled.

Q. Will you answer the question? Did the lights go out before you turned or after you turned to the left?

A. Just as I am turning to the left the lights flickered and went out.

Q. In other words, you were just waiting there to turn?

A. Just going in.

Q. I want to know whether you were turning, had turned, or had not turned.

A. I am just about to enter the boiler room.

Q. Then you had not turned, is that it?

A. Just entering into the boiler room when I stumbled.

The Court: I suggest to counsel that that is argumentative cross-examination without end, and when you get into controversy of that kind you can——

Mr. Bull: I am trying to find out where he stood, he has said two or three things here.

The Court: I appreciate precisely what it is you are seeking to do.

Mr. Bull: If I could only find out what is the fact, that is all I want.

The Court: I think he has told you as clearly as you can ever expect to get it.

Mr. Bull: I don't know what it is then.

[fol. 103] The Court: You asked him whether he could see before the lights went out. Of course, he could see if there was a light there.

Mr. Bull: The retarders.

The Court: You didn't ask him that. He assumed that was in your question, and he said that he couldn't see, because the boilers were on either side and obstructed his view, that it was only a narrow lane, and just as he was entering at the point where he could have seen this obstruction, the lights, as he used to express it at least a half a dozen times, flickered and went out, and he couldn't see. The thing was sudden and unexpected, he couldn't stop himself, and he went on and stumbled over this obstruction. You could question him for a week, and you would not get any further than that.

Mr. Bull: I will offer his drawing.

(Received and marked Exhibit R-2.)

Mr. Freedman: I would like to put on that drawing one more identification.

By Mr. Freedman:

Q. Will you mark on here, Mr. Taylor, where the entrance to the boiler room is?

A. Here the entrance, this is the engine room, and you come through here, and you have got to come in here to look back at the boilers, you walk in this way and you look back.

Q. Just point out, Mr. Taylor, where the entrance to the boiler room is?

A. Right here.

Q. Mark that "Y".

A. (The witness marks it "E".) "E"?

Q. No, you have an "E" here, mark it "Y".

[fol. 104] A. (The witness erases the "E" and inserts an "Y".)

Q. When did you leave the Marine Hospital?

A. October 3rd, to return to the Out-Patient Department.

Q. You left as an in-patient on October 3rd?

A. Yes, sir.

Q. That was at Stapleton?

A. Yes, sir.

Q. Did you see those retarders when they were taken out?

A. No, sir.

Q. Who is the owner of the Allomar, the vessel you returned to New York on?

A. Calmar Steamship Company.

Q. Who was it arranged for your passage on the Allomar?

A. Mr. Stapleton, the man that represents the Calmar Agency in Panama.

Q. Why didn't you ask to be relieved of your watches on your trip from Philadelphia to the Canal Zone?

Mr. Bull: I object to that.

The Court: Will you repeat the question?

(Question repeated.)

The Court: I don't see that logically and strictly speaking we are interested in his motives. Anyone could surmise what the answer was. He said he wanted to hold his job, and he repeatedly told them he wasn't trying to soldier on the job.

Q. Mr. Taylor, when you were in the Baltimore Marine Hospital, you testified you went to the Baltimore Marine Hospital, and also the Philadelphia Marine Hospital, did they scrape your toes or your bones there?

A. No, sir, they just examined them and gave me this little bottle of medicine.

[fol. 105] Mr. Freedman: That's all.

Mr. Bull: That's all.

Maurice Seltzer, recalled.

By Mr. Freedman:

Q. There was some discussion here yesterday about ringworm. Will you describe what the nature of ringworm is?

Mr. Bull: I object to that, there's no claim he had ringworm here.

Mr. Freedman: Counsel made an exhaustive examination yesterday on the question of ringworm, and the fact that the statement of ringworm appeared in one of the reports, I want to explain to the Court just what the nature of ringworm is, and what effect it may have had on this man's condition.

The Court: Is it objected to?

Mr. Bull: Yes, I think it's going too far.

The Court: Overruled, and an exception will be noted for the respondent.

(Exception noted for respondent.)

A. Ringworm is a fungus disease of the skin. It is usually superficial, and practically the only symptom is itching and redness between the toes, if it is present in the toes.

Q. Is there any pain?

A. No pain attached to ringworm.

Q. Has ringworm ever caused any serious complication?

A. In my opinion ringworm never causes any serious complication.

Q. Is it very common?

A. Ringworm is extremely common, it is present in about 80% of all people.

[fol. 106] Q. In your opinion, Doctor, can ringworm cause Berger's disease?

A. In my opinion it can never cause Buerger's disease. It is also the opinion of others to that effect.

By Mr. Bull:

Q. You have testified you didn't think the man had ringworm?

A. The question I took to mean was whether it's in the nature of ringworm.

Q. You have testified that you didn't believe that he ever had ringworm?

A. I testified yesterday I thought the report was not corroborated as it should be.

Q. And you didn't think he had ringworm?

A. I didn't think he had it.

By the Court:

Q. You meant you didn't think he had it, or you were not satisfied by the evidence before you that he did have it?

A. That's all, I was not satisfied by the evidence that he did have ringworm at that time. I believe the evidence should have been more scientific.

The Court: Is that all?

By Mr. Bull:

Q. Doctor, I take it from all of your testimony, both yesterday and today, that your opinion with respect to Taylor's condition is based entirely upon the reports that you read from the hospitals, and your talk with Taylor, is that it?

Mr. Freedman: I object to the question as not proper recross-examination. This was all gone over on cross-examination, and the only thing upon which counsel can re- [fol. 107] cross-examine him is the question of ringworm, which is the thing that we confined ourselves exclusively to on redirect.

The Court: Strictly that is true, but counsel is at liberty to ask anything while the witness is on the stand, that may be relevant and allowable. I call counsel's attention to the fact that I don't think he had completed his question. As I understand it, the question was whether the opinion was based on the records submitted to him, and the history of the case, is that right?

The Witness: That's right.

Mr. Bull: As given to him by Taylor.

The Court: Now will you repeat the question?

(Question repeated.)

The Court: That's right, he may answer that.

A. In arriving at any medical diagnosis——

The Court: Cannot you answer the question yes or no?

By the Court:

Q. Is your opinion based upon all this evidence which counsel has summed up in the question?

A. My opinion is based upon the hospital records and Taylor's history as given to me.

By Mr. Bull:

Q. By Taylor?

A. By Taylor and by examination of Taylor.

Q. In March, 1936?

A. In March and April, 1936.

Q. In doing that you had to decide the Baltimore Marine Hospital record was wrong, didn't you, the diagnosis?

A. In forming your opinion, however, you determined yourself in your own mind that the Baltimore Hospital diagnosis was wrong?

[fol. 108] A. Just the part relating to the ringworm I thought was insufficient for me to agree with.

Q. And also the same with the Gorgas Hospital?

A. No, I agreed with the Gorgas Hospital report.

Q. You did?

A. I did.

Q. You didn't have any way of determining whether they were right or wrong, did you?

A. I have no way.

Q. There wasn't anything in any of these hospital records that indicated or advised you of a traumatic injury, was there, in any of the hospital records that you examined?

A. I don't remember now.

Q. Will you look at them and tell us?

A. I will look at them. I see no mention made here of an injury sustained.

Mr. Bull: That's all.

By Mr. Freedman:

Q. I call your attention to the Marine Hospital report from Baltimore, part which reads as follows: "Patient complained of inflam-atory lesion between fourth and fifth right toes." Is that an indication or possible indication of trauma?

A. The word "inflammatory" itself actually means a condition characterized by pain, slight redness and swelling, and certainly an injury would produce a lesion similar to that.

Mr. Freedman: That's all.

By Mr. Bull:

Q. That may be caused by anything else, too, it doesn't indicate trauma?

A. Not necessarily, the lesion there might be some skin [fol. 109] disease, or maybe some other trouble, such as——

Q. It could be any one of a number of things?

A. Any other disease to that part.

By Mr. Freeman:

Q. But it can, however, be trauma?

A. It can be trauma.

James Kay, sworn.

By Mr. Freedman:

Q. What is your address, Dr. Kay?

A. 600 West Olney Avenue.

Q. You are a practicing physician in the City of Philadelphia?

A. Yes.

Q. How long have you been in practice?

A. Since 1917.

Q. From what schools did you graduate, Doctor?

A. Jefferson Medical College.

Q. What affiliations as a physician have you had, or do you now have?

A. After leaving Jefferson I served an internship at the Episcopal Hospital, Abington Hospital also, and now I am chief of Medical Division "A" at the Episcopal Hospital, associate professor of medicine at Temple University and consulting physician to Kensington Hospital for Women, that's all.

Q. Do you specialize in any particular branch of medicine and surgery?

A. Internal medicine.

[fol. 110] Q. Did you examine Charles W. Taylor, the libellant in this case?

A. Yes.

Q. When and where did you make such examination, Doctor?

A. I examined him April 10th, 1936, at my office.

Q. Did he give you a history there?

A. I obtained a history from him, yes.

Q. Have you read the abstracts from the clinical records of this man?

A. Yes.

Q. From your reading of those reports and your own examination and the history of the case, as given to you by Taylor, what is your conclusion as to his medical diagnosis?

A. That he has Berger's disease.

Q. Will you briefly describe the nature and symptoms of Berger's disease, Doctor?

A. Well, Berger's disease is an inflammation of blood vessels, and accompanying that inflammatory process there is clotting of blood in the vessels, usually artery and veins are both involved, and that accompanying clotting results in an obstruction to the flow of blood through these vessels, that results in a group of signs and symptoms that might be briefly described. As far as the symptoms are concerned, the patient's chief complaint is pain in which ever extremity is involved, coldness of the extremity, they have sensory changes characterized by burning tenderness of the affected part, they may be present, and those are the outstanding symptoms. As far as signs are concerned, one determines by the tactile sense that the extremity is very cold, is generally very pallid, if the patient is lying in a horizontal position, in the supine position, and if the [fol. 111] affected limb is held dependent generally there is a decided redness of the part. Often ulceration is observed, fissuring of the webs between the toes. There are changes in the nails, characterized by brittleness, the affected part is very prone to a development of hardening of the skin, and so-called calluses. Much may be said about it, but I presume that answers your question.

Q. I just wanted a brief description, I think that is sufficient. What is the cause of Berger's disease?

A. There's no known cause, of course.

Q. In your opinion, can trauma act as a precipitating agent in Berger's disease?

A. As I say, there is no known cause for Berger's disease, and the question as put is just a little bit ambiguous. I think that injury may precipitate the trend of events that would lead to the diagnosis of Berger's disease, but as far as precipitating the disease is concerned, as I have said, there is no known cause for it, and, therefore, when one makes that statement, to make the statement that injury would cause it is contradictory. I think an injury can precipitate the trend of events leading to the diagnosis of Berger's disease, but it is not recognized as a cause, of course. I think that injury can precipitate a trend of events that would lead to the diagnosis of Berger's disease. It could not be put down as a cause, of course.

Q. Doctor, when in your opinion did Berger's disease first become clinically recognizable in Taylor?

A. Well, I would say after the injury a careful examination would, it seems to me, have yielded information that would have with justification resulted in the diagnosis of Berger's disease.

[fol. 112] Q. In your opinion, Doctor, is Taylor cured of Berger's disease?

A. No, it's an incurable affection.

Q. Will Taylor require further medical care in the future?

A. I think, of course, for the rest of his life, natural life.

Q. Are relapses common in Berger's disease?

A. Exacerbations are common. After the disease has first manifested itself, of course, cure never results. It may remain dormant for a long period sometimes, and very short ones, but during the course of the disease at some time acute exacerbations occur, the process flares up.

Q. What, in your opinion, would be the result of a further relapse, Doctor?

A. The likely thing is further amputation.

Q. Could it prove fatal?

A. These cases eventually are fatal, of course, yes.

Q. Should a relapse occur, will Taylor need specialized care?

A. Of course, yes.

Q. What sort of care would he need, Doctor?

A. Well, of course, it depends upon the severity of the relapse. Home care might be adequate, but generally they need to be hospitalized again. The description of that care, of course, is long and rather intricate, depending upon the circumstances attending the case.

Q. Can you give us a description of the pain which accompanies Berger's disease?

A. Well, it's the most, one of the most severe of all pains, of course.

Q. Doctor, Taylor testified on direct examination yesterday that a little crack appeared in the stump of his foot [fol. 113] yesterday morning. In your opinion, Doctor, what would be the significance of this crack?

A. Well, that would be in my opinion an acute flare-up of the process.

Q. Leading to a relapse?

A. Well that would be a relapse if you want to call it that. It would be an acute exacerbation.

Cross-examination.

By Mr. Bull:

Q. Doctor, you stated that one of the symptoms or signs was ulcers showing up?

A. That's one of the signs, yes, sir.

Q. How long does it take this to show up?

A. I don't think there's any time particularly can be assigned for such a manifestation. I think it would be folly to specify a time, really, I don't think one can.

Q. But the disease is present for some little time before it gets to the stage where there's an ulcer or festering or anything of that kind, isn't it?

A. Yes, sir, generally it's a protracted affair but it may be acute. In the vast majority of instances, of course, the case is protracted. During the acute manifestation, one manifestation would be ulcers.

Q. Are they one of the final manifestations, ulcers?

A. A final manifestation from what standpoint?

Q. Of Berger's disease?

A. We would expect ulcers, of course, late in the disease. We expect it early, too, in certain instances.

Q. When you examined Taylor you didn't find any manifestations, those had all been taken care of before?

[fol. 114] A. Yes.

Q. And you based your opinion on what he told you, and on the medical reports which were submitted to you?

A. Yes.

Q. That included the one by the Baltimore Marine Hospital, which had the diagnosis of ringworm, I think?

A. Yes.

Q. What would ringworm look like, would that be a sort of ulcer or a festering or breaking of the skin?

A. Ringworm might be characterized by ulceration, yes.

Mr. Bull: That's all.

Mr. Freedman: No further questions.

Ralph W. Lowry, sworn.

By Mr. Freedman:

Q. What is your address, Doctor?

A. 1317 East Lycoming Street.

Q. You are a practicing physician in the City of Philadelphia?

A. I am.

Q. For how long, Doctor?

A. 10 years.

Q. From what schools did you graduate?

A. Jefferson Medical College, 1926.

Q. What affiliations as a physician have you had or do you now have, Doctor?

A. Internship in St. Joseph's Hospital, Philadelphia, Chief resident, Frankford Hospital, Philadelphia. Assistant surgeon, St. Joseph's Hospital. Assistant surgeon, Frankford Hospital, and a fellow of the American College of Surgeons.

[fol. 115] Q. Do you specialize in any particular branch of medicine or surgery?

A. In surgery.

Q. Have you examined Charles W. Taylor, the libellant in this case?

A. I have.

Q. When and where did you make such examination?

A. I examined Mr. Taylor on the 6th of June, 1936, and the 9th of June, 1936, at my office.

Q. Did he give you a complete history, Doctor?

A. He did.

Q. Have you read the medical reports in this case?

A. I have.

Q. From your reading of those reports and your own examination, and the history of the case, what is your conclusion as to his medical diagnosis?

A. My conclusion is that he is now a victim of Berger's disease.

Q. Upon what do you base your conclusion, Doctor?

A. Upon the history of his case, and upon the records in the pathologic section.

Q. When you say pathologic section, what do you mean, Doctor?

A. The examination of the vessel, which was removed from the amputation which Mr. Taylor suffered.

Q. Do you know where that was done?

A. That was done at the Stapleton Marine Hospital, New York.

Q. Can you briefly give us a description of Berger's disease, Doctor?

A. Berger's disease may assume one of two forms, it may assume the chronic form or the acute form. In the chronic form it is usually preceded, it is usually preceded by inter- [fol. 116] mittent pain in the legs or feet, very often discoloration, with change in color of the feet, toes, legs or feet, very often discoloration, with change in color of the feet, toes, legs, the appearance of ulcers or patches of dead skin, gangrene. These I would say characterize the chronic form. The acute form usually is at the onset following a trauma, an injury. From the time of the injury, the process of the acute form of Berger's disease assumes a rapid trent of events, and in that case the outstanding symptom is pain. These cases usually have to have any number of amputations, minor amputations, until they eventually end in an amputation, above which the blood supply is good.

Q. What is the cause of Berger's disease, Doctor?

A. There is no agreement as to the cause, no one knows the cause of it.

Q. Can trauma precipitate Berger's disease, in your opinion?

A. In my opinion trauma always precipitates Berger's disease of the acute variety.

Q. Are there any authorities which may support your view, Doctor?

A. I think most of the authorities support the view of the acute onset of Berger's disease from trauma.

Q. When, in your opinion, when did Berger's disease first become clinically recognizable in Taylor?

A. Clinically recognizable?

Q. Yes, sir.

A. From the records, from the records it was clinically recognized at the Marine Hospital in Ellis Island, at which time they made a diagnosis of thrombo-angiitis-obliterans, Berger's disease; but in my opinion it was simply a question [fol. 117] of Berger's disease not being though- of before that time. From the very inception of his trauma, and the trend of events that followed it, Berger's disease might have been thought of. It is no reflection that it wasn't, because it is not a very common disease.

By the Court:

Q. Doctor, had it been thought of, would there have been any difference in the mode of treatment?

A. Well, your Honor, there might have been some other treatment attempted. I can't say, of course, whether there would have been any difference in the outcome of the case, because these treatments are all rather new. I rather think that the eventual outcome would have been the same, that he would have had an amputation.

By Mr. Freedman:

Q. In your opinion, was the accident which Taylor states he sustained, sufficient to precipitate the condition finally necessitating the amputation of his right leg?

The Court: Will you read that question?

(Question repeated.)

Mr. Bull: I object to it.

The Court: Overruled, and I will allow an exception to the respondent.

(Exception noted for respondent.)

Q. Will you answer that, Doctor, please?

A. Yes, I do believe that the accident is sufficient to account for the trend of events that followed it.

Q. In your opinion is Taylor cured of Berger's disease today?

A. Absolutely not.

Q. Will he require any medical treatment in the future? [fol. 118] A. He will require medical supervision for the rest of his life.

Q. Are relapses common in Berger's disease, Doctor?

A. Yes, they are quite common.

Q. Do the authorities support your opinion?

A. Yes, they do.

Q. What, in your opinion, would be the result of further relapses?

A. There may be several results. He may have beginning ulcers in that stump of the amputated leg, due perhaps to the further progression of the disease, and due to the trauma of the artificial leg. He may have a beginning of gangrene in the other leg, he may have it in the hands, he may lose both legs, he may lose his hands, he may lose his life, that may happen.

Q. In such event, Doctor, will he require specialized care?

A. Yes, I think he will.

Q. What sort of care would you say he would require?

A. He will require surgical care, and he will require some attempt to prevent these evidences that I speak of, that may happen, in the way of treatment by physio-therapy, and other methods which we now have available, to try to prevent the spread of the disease.

Q. Would you say he should be examined periodically for the rest of his life, regardless of whether he shows any indications?

A. I certainly would.

Q. Can you describe the pain which accompanies Berger's disease, Doctor?

A. The pain at the very beginning of the disease, before there is any ulcers, is usually what might be described as stabbing, or lancinating, sufficient to make a person stop [fol. 119] walking, if they are walking at the time, it usually makes them bend down and take their shoe off, and rub the leg and rub the foot, and from that time on it gradually becomes worse. With the appearance of gangrene or ulcers the pain becomes so severe in that case that they beg for amputation, they don't care what is done to relieve them of this pain. Very often we give opiates, and very often they have no effect.

Q. Doctor, Taylor testified yesterday that when he got up he saw a little crack on the stump of his right foot.

A. When he got up from where?

Q. When he got up out of bed yesterday, when he was taking a bath, or going to take a bath. In your opinion does that crack have any significance?

A. I think that's a very foreboding symptom. I would not like to see that. That could initiate another sequence of events, such as he had, it might be the beginning of another amputation higher up.

Q. Resulting in what might happen as you explained before?

A. Absolutely.

Cross-examination.

By Mr. Bull:

Q. Doctor, what do you mean by precipitate, you say that Berger's disease can be precipitated by trauma?

A. I mean that a man may have been clinically well preceding a certain trauma. He may have been suffering from at least nothing that he complained of, or we could discern. Following which trauma a course of events takes place, and that's what I would say I meant by precipitating it.

[fol. 120] Q. You don't mean that trauma caused the Berger's disease?

A. I don't mean that it caused the Berger's disease, but I mean that it caused the succeeding trend of events, whatever they may be, and in this case it was Berger's disease.

Q. There are a number of kinds of trauma, aren't there?

A. Very many.

Q. And one of them is chemical, isn't it?

A. That's right.

Q. And there are a number of kinds of chemicals, which would do as you say, start these succeeding events?

A. Quite true.

Q. You, in your examination of the reports, and your discussion of this with Taylor, you were advised, were you, that he had had on the 11th of February a crack or breaking between his little and fourth toes of his right foot?

Q. And that after that he had applied different kinds of chemicals and things to it?

A. No.

Q. Different kinds of medicines to it?

A. No, the only note I have of that is that he was given a simple remedy for local application.

Q. Do you know what the remedies were?

A. No, I do not.

Q. He was given different remedies, wasn't he?

A. That I can't say, all I know is he was given a simple remedy for local application, and he received some dental treatment, that's all I know about that.

[fol. 121] Q. It's possible then, isn't it, that these treatments could cause a trauma?

The Court: Cause what?

Mr. Bull: A chemical trauma.

A. If the chemicals used were severe enough, it was possible.

Q. You don't know what was used?

A. I don't know what they were.

Q. What authorities were you referring to when you spoke of authorities on acute trauma?

A. I can read them to you right here. First of all there's Berger's book himself on circulatory diseases of the extremities. There's an article by Barker, I believe, of the Mayo Clinic, which appeared in the Journal of the American Medical Association, June 15th, 1935. There's an article. That's the same article, also, by Barker. There's an article by L. S. McKittrick of the Massachusetts General Hospital, which appeared in Annals of *B*urgery, September, 1935, page 345. They are the records that I have.

Q. There are a lot of other articles and treatises on Berger's disease?

A. Yes, a great many.

Q. How about Brown?

A. Brown may have written about it, I don't recall reading his article.

Q. How about Allen?

A. I don't recall reading his article.

Q. Have you treated much Berger's disease?

A. I have seen approximately fifteen cases of Berger's disease here, and I saw a great number in Scotland at the University of Edinburgh.

[fol. 122] Q. Again I ask you, have you treated many cases of Berger's disease?

A. I treated fifteen here.

Mr. Bull: That's all.

By Mr. Freedman:

Q. You noted, however, in your records, that before he received or applied for any treatment he had an inflammatory lesion of the last toe, of the small toe on his right foot?

A. That's right, that's what he applied for treatment for.

By Mr. Bull:

Q. Where?

A. He applied for treatment for the inflammatory lesion.

Q. Where, Baltimore?

A. At the Marine Hospital in Baltimore.

Mr. Freedman: That's all.

By Mr. Bull:

Q. That's where you got your information about the medication, is it?

A. Yes, sir.

Q. And were you also advised that at the Public Health Service here in Philadelphia he was given some other medication?

A. No, my notes state here that he only reported once at the Philadelphia station, and I have no note here that he was given any medication at that time.

Q. Did you note that, and didn't he tell you that he did?

A. I didn't ask him whether he did.

Q. Your examination is based entirely on what he told you, and what you saw in the reports?

A. Yes, sir.

[fol. 123] Mr. Freedman: That's all.

Mr. Freedman: I offer in evidence the abstract from the clinical record of Charles W. Taylor from the United States Marine Hospital in Baltimore, Maryland, and I ask that it be marked libellant's Exhibit No. 1.

(Received and so marked.)

Mr. Freedman: I offer in evidence the abstract from the clinical record of the Gorgas Hospital of Charles W. Taylor, and ask that that be marked libellant's Exhibit No. 2.

(Received and so marked.)

Mr. Freedman: I offer in evidence abstract from the clinical record of Charles W. Taylor from the United States Marine Hospital in Ellis Island, and ask that that be marked libellant's Exhibit No. 3.

(Received and so marked.)

Mr. Freedman: I offer in evidence abstract from the clinical record of Charles W. Taylor from the United States Marine Hospital in Stapleton, New York, and ask that it be marked libellant's Exhibit No. 4.

(Received and so marked.)

Mr. Bull: I want to note an objection to these records as not being properly proved.

The Court: That will only require sending for a witness from Baltimore to prove them.

Mr. Freedman: They are certified copies from the Marine Hospital.

[fol. 124] The Court: You take your chances on that. You have the responsibility, if the statute makes them evidentiary, of course, they are evidentiary.

Mr. Freedman: I want the record to show that these copies are all certified copies from the various Marine Hospitals.

The Court: I want you to face the responsibility of the act of Congress making these records, when certified, as they have been, evidentiary. I haven't the statute, but I will overrule the objection, and give the respondent an exception in each case.

(Exceptions noted for respondent.)

Mr. Freedman: I offer in evidence the depositions of James Joseph Waarosson, taken in the office of Friedman, Goldstein and Pechner, 1501 Franklin Trust Building, Philadelphia, Pennsylvania, on Tuesday, May 12th, 1936, at two o'clock P. M. This deposition is already filed.

Mr. Bull: I want to object to the depositions as a whole, because it is nine-tenths hearsay, and if he is going to offer them as a whole then I will have to object to the admission.

Mr. Freedman: I offer it as a whole, and I ask counsel to refer to what portions he objects to.

The Court: You must treat it as a deposition, and theoretically read it into the record precisely as if the witness was on the stand. Any part of the examination, whichever side objects, they may object to it, and we will rule upon it precisely as if the witness was called here and was under [fol. 125] cross-examination. The deposition is read into evidence by counsel. Now read it, and when the other side objects, the stenographer will enter the objection, and we will rule. Go ahead.

Mr. Pechner:

"Q. Mr. Waarosson, what is your age?

A. 37.

Q. And your occupation?

A. Ship's cook and steward.

Q. How long have you followed that occupation?

A. Seven years.

Q. Did you ever serve on the steamship Losmar?

A. Yes.

Q. Do you remember when you joined her?

A. I joined her—I was on her twice. I joined the Losmar the first time August 14, 1931, when I was transferred to another ship, and rejoined her again in August of 1934.

Q. Were you a member of the crew of the Losmar on or about February 11, 1935?

A. Yes.

Q. In what capacity?

A. In the capacity of a utility man.

Q. Where was the vessel at that time?

A. At Sparrow's Point, Baltimore.

Q. Do you remember a man by the name of Charles W. Taylor?

A. I do.

Q. Was he a member of the crew at that time?

A. Yes.

Q. Do you remember what happened on or about February 11, 1935?

[fol. 126] A. About that time, yes.

Q. Tell us what happened?

A. Mr. Taylor came to me, to my room, and showed me his toe, and said that——

Mr. Wolff: I object to anything that Taylor said to him at that time. Let him tell what he saw."

The Court: What he knows about the existence of the obstruction he may testify to. What somebody else said to him about an obstruction is objectionable, that's pure hearsay. I will sustain the objection and give the libellant an exception, and strike out from the depositions: "The Witness (continuing): Mr. Taylor came to my room and showed me his toe and asked me if I had anything to put on it, and I told him no, and I referred him to Captain Jimmeyer, and Captain Jimmeyer wasn't aboard, and I referred him to the steward. So the steward wasn't aboard, and he said——

Mr. Wolff: I object to anything he said.

Mr. Freedman: Tell us all that you know about this and Mr. Wolff can enter his objections, but you can answer just the same. It is up to the Court to strike it out or leave it in, but you state the facts.

Mr. Wolff: You ask him to state conversations?

Mr. Freedman: Yes.

Mr. Wolff: Knowing they are not evidence.

Mr. Freedman: I believe they are evidence.

Q. Go ahead, Mr. Waarosson?

A. Mr. Taylor came back to my room and told me the steward wasn't aboard, and I asked him what was the mat- [fol. 127] ter, and he said he hurt his toe, and I said "How did you hurt your toe?' And he said, 'I stubbed it on the retarders', and I asked him how, and he said 'That is when the lights went out'.

Q. What do you mean when the lights went out?

A. He told me he stubbed his toe when the lights went out."

The Court: The ruling of the Court is that what Taylor said about the so-called accident, and what he said as to the conditions surrounding it, the objection to that part is sustained, and an exception allowed to the defendant, but the fact that the report was made to him of the injury sustained may stay in the record, but what he said as to what happened to him may be stricken out.

Mr. Pechner (continuing):

"Q. Do you know anything about the lights going out?

A. I was in the galley and the lights were blinking and went dim and went out. I was making batter for a cake.

Q. How long were the lights out?

A. The lights were out five to eight minutes all over the ship.

Q. What caused the lights to go out?
A. Because they were changing over from steam to air.

Mr. Wolff: I object to that. You were not there?
The Witness: I found out that they changed over from steam to air.
Mr. Wolff: I move that the answer be stricken from the record."
The Court: The objection is sustained, and the motion to strike out-allowed, and an exception noted for the libellant.

(Exception noted for libellant.)

[fol. 128] Mr. Pechner (continuing).

"By Mr. Freedman:

Q. What time did this happen—this blinking and going out of the lights?
A. A little after 4.
Q. In the afternoon?
A. Yes, sir.

By Mr. Wolff:

Q. What day?
A. The 11th.
Q. Of what?

Mr. Freedman: He testified to that before.

By Mr. Freedman:

Q. You stated that Mr. Taylor came and asked you for something, and what time was that?
A. After he came off watch.
Q. What time was that?
A. After 8 o'clock.
Q. Do you know whether Mr. Taylor's toe was treated thereafter?

Mr. Wolff: I move to strike that out.
Mr. Freedman: Very well, I will strike it out.

Q. Do you know whether Mr. Taylor received any treatment after that?

Object- to by Mr. Wolff as leading.

Q. Answer?

A. He didn't receive any treatment of the toe until the following day.

[fol. 129] Mr. Wolff: That is objected to on the ground that the witness is not competent to answer and not in a position to tell.

A. He didn't get any treatment until the following day and the steward washed it out with a solution of boric acid and put yellow salve on it.

By Mr. Wolff:

Q. Did you see that?
A. Yes, sir.

By Mr. Freedman:

Q. You were in the steward's department?
A. I was in the capacity of utility man.
Q. And you would know everything going on?

Objected to by Mr. Wolff as leading.

(Question withdrawn).

Q. Let me ask you this: Is it customary whenever a man is injured on a boat, and particularly on this boat, to have the man go to the steward for first treatment?
A. The captain.
Q. Who treats them generally?
A. The captain generally sends them to the steward. He has possession of the keys.

Objected to by Mr. Wolff as incompetent and irrelevant.

Q. Going back to the blinking of the lights, did you have any notice, or were you told, that the lights were going to be changed?
A. No, sir.
Q. Do you remember whether Mr. Taylor talked about his toe after that time?
[fol. 130] A. He complained about his foot paining him.

Mr. Wolff: I object to that as hearsay, improper and irrelevant."

The Court: Objection sustained, and the libellant will be allowed an exception.

(Exception noted for libellant.)

Mr. Pechner (continuing):

"Q. Did he complain to you?

Objected to by Mr. Wolff."

The Court: My ruling will be as before and I will allow you an exception.

(Exception noted for libellant.)

Mr. Pechner (continuing):

"A. He told me numerous times that his foot was ailing him.

Q. Did you notice anything about his shoes?

Objected to by Mr. Wolff as leading.

(Question withdrawn.)

Q. What else did you notice about Mr. Taylor after the vessel left Philadelphia?

A. I noticed when we left Philadelphia right about where his shoe was cut off.

Q. Describe it.

A. The shoe was cut off the half of his foot (pointing to the front part of his shoe).

Q. What shoe?

A. The right foot.

Q. Do you know whether he received any treatment at that time?

[fol. 131] Mr. Wolff: Objected to as leading, and the witness is incompetent to testify to what Mr. Taylor did.

Mr. Freedman: I asked him whether he knew Mr. Taylor received any treatment of his own knowledge.

A. He had it washed out two or three times with boric acid. I seen it the first time, and the second time he told me he had his foot washed."

The Court: The part of the depositions within his own sight and knowledge, the objection is overruled, and an exception allowed for the respondent. The part of the answer as to what Taylor told him, the objection is sustained, and that part of his answer stricken out, and an exception allowed to the libellant.

(Exceptions so noted.)

Mr. Wolff: This witness kept answering and testifying to conversations, stating what they were. These were objected to, and my motion is to strike them out.

The Court: No, I can't see that he was testifying to any conclusion, he was testifying to what he had witnessed.

Mr. Pechner (continuing):

"Q. Who washed the wound?

A. The steward.

Q. What happened when you left the canal zone?

A. When we got into Colon I was standing right outside of my galley and heard Mr. Taylor ask Captain Jimmyer to get him a doctor and Captain Jimmyer said there was no doctor available and he couldn't get in touch with the agent. Captain Jimmyer went ashore and when he came back there was no doctor there, and Mr. Taylor insisted on having a doctor at the time, but he said he couldn't get in touch with the agent.

[fol. 132] Q. You heard that?

A. I heard every word of it.

Q. Did you see Taylor's foot that day?

A. That day I saw Mr. Taylor's foot. It was the most meanest looking thing I ever saw. It was red and inflamed and a hole in it about the size of a dime.

Q. Was Taylor able to walk at that time?

A. He was just hobbling around on the deck.

Q. Do you know whether the captain saw Taylor's foot at that time?

A. Mr. Jimmyer did see the foot at that particular time.

Q. Was he wearing the shoe that was cut at that time?

A. He was wearing the cut shoe.

Q. Do you know whether a doctor came aboard the vessel after leaving Colon?

A. There was a Public Service doctor came on just before we entered the locks, and he and some other man went to the captain's room and stayed there about 20 minutes or a half hour, and then went back to shore in a launch.

Q. Did you see all of that?

A. I did.

Q. What happened after that?

A. After they went ashore we proceeded to go through the canal, and after we got to Pedromeguill Mr. Taylor insisted on seeing a doctor.

[fol. 133] Q. When was that with reference to entering the locks? How soon after you left Colon was that?

A. About five or six hours?

Q. I am referring to the time when you first came into Colon?

A. Approximately 18 to 20 hours.

Q. Proceed from there?

A. Then Mr. Taylor insisted on seeing a doctor.

Mr. Wolff: I object to these answers. In the first place, they state conclusions, and I object to the conclusions as not relevant.

Q. Just tell us exactly what you heard Mr. Taylor say to the captain?"

The Court: If the saying of it to the captain is an evidential fact, he can certainly say it, that is not hearsay. His insistence upon saying it probably bears upon the question of injury, and I don't see it has any other bearing.

Mr. Pechner (continuing):

"A. He said: 'Captain, I have to see a doctor', and Captain Jimmyer hollored over to some one who runs around there with the phone, and about 45 minutes later a doctor was aboard and took Mr. Taylor off.

Q. That is all you know about it?

A. Yes.

Q. Do you have any interest in this case?

A. None whatsoever.

Q. You are not related to Mr. Taylor?

[fol. 134] A. No. He is just a shipmate of mine.

Cross-examination.

By Mr. Wolff:

Q. How long have you known Mr. Taylor?

A. Since Mr. Taylor joined the ship.

Q. When was that?

A. I guess altogether I have known him—I first met him when he joined in Baltimore—about 14 months.

Q. You have seen him right along?

A. No. I haven't seen Mr. Taylor, I guess it was seven or eight months. When I got off the Losmar I saw him.

Q. Where did you see him?

A. At the Seamen's Institute.

Q. Where?

A. In Philadelphia.

Q. That was how long ago?

A. About 4 or 5 months ago.

Q. You say you haven't seen him since?

A. No.

Q. What is Mr. Taylor's position on the ship?

A. Fireman.

Q. In the engineer's department?

A. Yes.

Q. And you were what?

A. Utility man in the steward's department.

Q. Were you ever in the fire room?

A. No.

Q. Or the engine room?

A. No.

[fol. 135] Q. Do you know what a retarder is?

Objected to by Mr. Freedman.

A. I know what it is to see it. It is a bent piece of steel that goes into the boiler tube.

Object- to by Mr. Freedman as irrelevant.

Q. You have never seen none?

A. Only pictures of them.

Q. You say the lights on this ship blinked?

A. Yes.

Q. Five to eight minutes?

A. Yes.

Q. What day was that?

A. On the 11th.

Q. Of February?

A. Yes.

Q. What year?

A. 1934.

Q. And at that time you were where?

A. There in the galley making cake.

Q. This happened about what time?

A. After 4 o'clock.

Q. Well, can you make it a little more definite? Was it shortly after 4?

A. Yes.

Q. And you were in the galley?

A. Yes.

[fol. 136] Q. And had been there for how long?

A. All day.

Q. And all that you observed is the fact that the lights were out?

A. The lights blinked and were dim and then they went out, and they were out 5 to 8 minutes.

Q. And you don't know what caused that?

A. I do know it was due——

Q. How do you know?

Mr. Freedman: Let him answer.

A. Just to the change from steam to air.

Q. Did you see them change from steam to air?

A. I knew that.

Q. How did you know?

A. Maybe I walked right past the galley when the dining room closes. I know they were changing from steam to air. I didn't see them do it, but I knew they were doing it.

Q. How do you know?

A. Because I saw them hook up the air holes in the back. I was walking past the fireroom. I know it was the early part of the day.

Q. What time?

A. I do not know.

Q. What do you mean by the early part?

A. In the afternoon.

Q. The early part of February? Wasn't it sometime in the morning?

[fol. 137] A. It was the afternoon.

Q. You don't know when it was?

A. It was in the afternoon, and around the afternoon of that day I saw the man hook the hose up.

Q. Why did you say it was the early part of the day a moment ago?

A. I don't recall—the late part of the day,

Q. You spoke of having heard a conversation between Mr. Taylor and the captain of the ship at Colon?

A. Yes.

Q. Can you fix the date?

A. I can't really say the date.

Q. Sometime in the evening?

A. It was about 7 o'clock in the evening.

Q. At night.

A. Yes.

Q. You heard the captain say there was no doctor available?

A. No. He couldn't get in touch with the agent.

Q. When did the ship leave Colon?

A. 7 o'clock the following morning.

Q. And a few hours later got to Pedromeguill?

A. The first lock, and the Public Service doctor came aboard.

Q. Did the doctor see Taylor?

A. No. Mr. Taylor was on watch.

[fol. 138] Q. How do you know the doctor did not see him?

A. Because there wasn't anyone around that part of the ship where the galley is situated, or I could see him.

Q. Where is the galley situated?

A. Aft number 3 hatch.

Q. You didn't see the doctor come aboard?

A. I saw him come aboard and leave.

Q. How long was the doctor on board?

A. From 20 minutes to half an hour.

Q. And where was he?

A. Up in the captain's quarters.

Q. The captain's quarters are on the bridge?

A. Under the bridge, amidship house.

Q. And the doctor was taken off the ship?

A. Yes.

Q. Some 45 minutes later?

A. Yes.

Q. Who was the steward on board?

A. A Spanish fellow by the name of Frank Zarrerraga.

Q. You said you were leaving Philadelphia when you noticed Taylor's foot?

A. Yes.

Q. When did you leave Philadelphia?

A. I don't know the date.
Q. That was on the voyage to the West Coast?
A. Yes, sir.

Redirect examination.

By Mr. Freedman:

Q. You testified before under direct examination that [fol. 139] Taylor was hurt on February 11, 1935, and then when Mr. Wolff questioned you he asked you whether it was 1934. I do not know whether I understood the question properly, but I ask you now to tell us what date it was?
A. It was 1934.
Q. How long have you known Taylor?
A About 14 months.
Q. Then it couldn't possibly have been 1934?
A. I have it right here (witness examining small book).
Q. Will you look at the discharge and make sure of that, so that we have it straight on the record.
A. 1935.
Q. Can you verify that from your discharge?
A. Yes.
Q. How long have you served with the Calmar Line?
A. I joined the Calmar September 29, 1930, as a mess boy and left it in 1935.
Q. Do you expect to go back to the Calmar?
A. I am waiting every minute every day.
Q. Now, I would like you to tell me whether or not you are sure that the blinking lights you described before and the call that Mr. Taylor made on you for treatment both happened on the same day?

Mr. Wolff: That is objected to as not proper reexamination.

A. The same day.
Q. You are absolutely sure of that?
A. Yes, sir.
[fol. 140] Q. I would like to clear up a little bit about the time that the vessel took to get from Colon to the point where Mr. Taylor was removed from the ship. How long was it from the time that the vessel left Colon until the time when the Public Service doctor came on board the vessel?

Objected to by Mr. Wolff as not proper re-examination.

A. About 6 hours.

Q. And then how long after that was it before you got to the point where they took Mr. Taylor off the vessel?

A. When we left Colon until Mr. Taylor went off, it was 6 hours.

Q. I mean how long was it from the time he first asked for a doctor until the doctor arrived?

A. From the time he first asked for a doctor and the doctor arrived was 18 hours.

Q. When you first came into Colon and then left, how long was it until the time that Taylor was removed, how long from the time you came into Colon?

A. 18 hours.

Recross-examination.

By Mr. Wolff:

Q. Did you discuss your testimony with Mr. Freedman?

A. No, sir.

Q. You have not?

A. No.

Q. You didn't give Mr. Freedman a statement of what you wanted to say here today?

[fol. 141] A. No, sir.

Q. You did not?

A. I cam- up here——

Q. Just answer the question?

Mr. Freedman: Let him do so.

The Witness: I stated everything to Mr. Freedman as I stated here.

Q. Did you give him a statement?

A. Yes, sir."

Mr. Freedman: That is all we have to offer at this time, we rest.

The Court: What do you mean, at this time?

Mr. Freedman: The defendant has not offered any testimony.

The Court: Do you rest?

Mr. Freedman: We rest, yes, sir.

Mr. Wolff: All of our witnesses are on a vessel, which is now on the Pacific Coast, and she makes repeated return trips. They are not available to us for any extended periods of time, and we want to bring this——

The Court: When will they be available?

Mr. Wolff: The vessel is due here on the 6th of July, and I suggest that we have a day or two leeway on that, and we fix July 8th for continuing the case, if that's agreeable to your Honor.

(After further unreported colloquy.)

[fol. 142] The Court: I will hear your medical witnesses any day this month. Your seamen witnesses, their depositions can be taken when they are here, otherwise they can be taken sometime in August when the case will be finally closed.

(After further colloquy.)

The Court: Then I will declare this hearing adjourned.

[fol. 143] Deposition taken on behalf of the libellant in the office of Freedman, Goldstein & Pechner, Esquires, 1501 Franklin Trust Building, Philadelphia, Pa., on Tuesday, May 12, 1936, at 2 o'clock P. M.

Appearances:

Freedman, Goldstein & Pechner, Esquires (by Abraham E. Freedman, Esq., and I. P. Pechner, Esq.), for libellant.

Lewis, Wolff & Groulay, Esquires (by Otto Wolff, Jr., Esq.), for respondent.

It is agreed by and between counsel for the respective parties that these depositions may be taken stenographically and thereafter reduced to typewriting, and that the signing, sealing, certification and filing thereof may be waived.

Libellant's Testimony

James Joseph Aarosson, affirmed, by William J. David, a notary Public of the Commonwealth of Pennsylvania.

Direct examination.

By Mr. Freedman:

Q. Mr. Aarosson, what is your age?

A. 37.

Q. And your occupation?

A. Ship's cook and steward.

[fol. 144] Q. How long have you followed that occupation?

A. Seven years.

Q. Did you ever serve on the steamship Losmar?

A. Yes.

Q. Do you remember when you joined her?

A. I joined her—I was on her twice. I joined the Losmar the first time August 14, 1931, when I was transfered to another ship, and rejoined her again in August of 1934.

Q. Were you a member of the crew of the Losmar on or about February 11, 1935?

A. Yes.

Q. In what capacity?

A. In the capacity of a utility man.

Q. Where was the vessel at that time?

A. At Sparrow's Point, Baltimore.

Q. Do you remember a man by the name of Charles W. Taylor?

A. I do.

Q. Was he a member of the crew at that time?

A. Yes.

Q. Do you remember what happened on or about February 11, 1935?

A. About that time, yes.

Q. Tell us what happened?

A. Mr. Taylor came to me, to my room, and showed me his toe, and said that——

Mr. Wolff: I object to anything that Taylor said to him at that time. Let him tell what he saw.

[fol. 145] The Witness (continuing): Mr. Taylor came to my room and showed me his toe and asked me if I had anything to put on it, and I told him no, and I referred him to Captain Jimmeyer, and Captain Jimmeyer wasn't aboard, and I referred him to the Steward. So the Steward wasn't aboard, and he said——

Mr. Wolff: I object to anything he said.

Mr. Freedman: Tell us all that you know about this and Mr. Wolff can enter his objections, but you can answer just the same. It is up to the Court to strike it out or leave it in, but you state the facts.

Mr. Wolff: You ask him to state conversations?

Mr. Freedman: Yes.

Mr. Wolff: Knowing they are not evidence.

Mr. Freedman: I believe they are evidence.

Q. Go ahead, Mr. Aarosson?

A. Mr. Taylor came back to my room and told me the Steward wasn't aboard, and I asked him what was the matter, and he said he hurt his toe, and I said "How did you hurt your toe?" And he said, "I stubbed it on the retarders", and I asked him how, and he said "That is when the lights went out".

Q. What do you mean when the lights went out?

A. He told me he stubbed his toe when the lights went out.

Q. Do you know anything about the lights going out?

A. I was in the galley and the lights were blinking and went dim and went out. I was making batter for a cake.

[fol. 146] Q. How long were the lights out?

A. The lights were out five to eight minutes all over the ship.

Q. What caused the lights to go out?

A. Because they were changing over from steam to air.

Mr. Wolff: I object to that. You were not there?

The Witness: I found out that they changed over from steam to air.

Mr. Wolff: I move that the answer be stricken from the record.

By Mr. Freedman:

Q. What time did this happen—this blinking and going out of the lights?

A. A little after 4.

Q. In the afternoon?

A. Yes sir.

By Mr. Wolff:

Q. What day?

A. The 11th.

Q. Of what?

Mr. Freedman: He testified to that before.

By Mr. Freedman:

Q. You stated that Mr. Taylor came and asked you for something, and what time was that?

A. After he came off watch.
Q. What time was that?
A. After 8 o'clock.
Q. Do you know whether Mr. Taylor's toe was treated thereafter?

[fol. 147] Mr. Wolff: I move to strike that out.
Mr. Freedman: Very well, I will strike it out.

Q. Do you know whether Mr. Taylor received any treatment after that?

Objected to by Mr. Wolff as leading.

Q. Answer?
A. He didn't receive any treatment of the toe until the following day.

Mr. Wolff: That is objected to on the ground that the witness is not competent to answer and not in a position to tell.

A. He didn't get any treatment until the following day and the steward washed it out with a solution of boric acid and put yellow salve on it.

By Mr. Wolff:

Q. Did you see that?
A. Yes sir.

By Mr. Freedman:

Q. You were in the Steward's department?
A. I was in the capacity of utility man.
Q. And you would know everything going on?

Objected to by Mr. Wolff as leading.
(Question withdrawn).

Q. Let me ask you this: Is it customary whenever a man is injured on a boat, and particularly on this boat, to have the man go to the Steward for first treatment?
A. The Captain.
Q. Who treats them generally?
[fol. 148] A. The Captain generally sends them to the Steward. He has possession of the keys.

Objected to by Mr. Wolff as incompetent and irrelevant.

Q. Going back to the blinking of the lights, did you have any notice, or were you told, that the lights were going to be changed?

A. No sir.

Q. Do you remember whether Mr. Taylor talked about his toe after that time?

A. He complained about his foot paining him.

Mr. Wolff: I object to that as hearsay, improper and irrelevant.

Q. Did he complain to you?

Objected to by Mr. Wolff.

A. He told me numerous times that his foot was ailing him.

Q. Did you notice anything about his shoes?

Objected to by Mr. Wolff as leading.

(Question withdrawn.)

Q. What else did you notice about Mr. Taylor after the vessel left Philadelphia?

A. I noticed when we left Philadelphia right about where his shoe was cut off.

Q. Describe it?

A. The shoe was cut off the half of his foot, (Pointing to the front part of his shoe).

Q. What shoe?

A. The right foot.

[fol. 149] Q. Do you know whether he received any treatment at that time?

Mr. Wolff: Objected to as leading, and the witness is not competent to testify to what Mr. Taylor did.

Mr. Freedman: I asked him whether he knew Mr. Taylor received any treatment of his own knowledge.

A. He had it washed out two or three times with boric acid. I seen it the first time, and the second time he told me he had his foot washed.

Q. Who washed the wound?

A. The Steward.

Q. What happened when you left the canal zone?

A. When we got into Colon I was standing right outside of my galley and heard Mr. Taylor ask Captain Jimmyer to get him a doctor and Captain Jimmyer said there was no ctor nd he couldn't get in touch with the agent. Captain went ashore and when he came back there was no docto , and Mr. Taylor insisted on having a doctor at the ti he said he couldn't get in touch with the agent.

Q. You heard that.

A. I heard every word of it.

Q. Did you see Taylor's foot that day?

A. That day I saw Mr. Taylor's foot. It was the most meanest looking thing I ever saw. It was red and inflamed and a hole in it about the size of a dime.

Q. Was Taylor able to walk at that time?

A. He was just hobbling around on the deck.

[fol. 150] Q. Do you know whether the Captain saw Taylor's foot at that time?

A. Mr. Jimmyer did see the foot at that particular time.

Q. Was he wearing the shoe that was cut at that time?

A. He was wearing the cut shoe.

Q. Do you know whether a doctor came aboard the vessel after leaving Colon?

A. There was a Public Service Doctor came on just before we entered the locks, and he and some other man went to the Captain's room and stayed there about 20 minutes or a half hour, and then went back to shore in a launch.

Q. Did you see all of that?

A. I did.

Q. What happened after that?

A. After they went ashore we proceeded to go through the canal, and after we got to Pedromeguill Mr. Taylor insisted on seeing a doctor.

Q. When was that with reference to entering the locks? How soon after you left Colon was that?

A. About five or six hours.

Q. I am referring to the time when you first came into Colon?

A. Approximately 18 to 20 hours.

Q. Proceed from there?

A. Then Mr. Taylor insisted on seeing a doctor.

Mr. Wolff: I object to these answers. In the first place, they state conclusions, and I object to the conclusions as not relevant.

[fol. 151] Q. Just tell us exactly what you heard Mr. Taylor say to the Captain?

A. He said: "Captain, I have to see a doctor", and Captain Jimmyer hollered over to some one who runs around there with the phone, and about 45 minutes later a doctor was aboard and took Mr. Taylor off.

Q. That is all you know about it?

A. Yes.

Q. Do you have any interest in this case?

A. None whatsoever.

Q. You are not related to Mr. Taylor?

A. No. He is just a shipmate of mine.

Cross-examination.

By Mr. Wolff:

Q. How long have you known Mr. Taylor?

A. Since Mr. Taylor joined the ship.

Q. When was that?

A. I guess altogether I have known him—I first met him when he joined at Baltimore—about 14 months.

Q. You have seen him right along?

A. No. I haven't seen Mr. Taylor, I guess it was seven or eight months. When I got off the Losmar I saw him.

Q. Where did you see him?

A. At the Seamen's Institute.

Q. Where?

A. In Philadelphia.

Q. That was how long ago?

[fol. 152] A. About 4 or 5 months ago.

Q. You say you haven't seen him since?

A. No.

Q. What is Mr. Taylor's position on the ship?

A. Fireman.

Q. In the engineer's department?

A. Yes.

Q. And you were what?

A. Utility man in the steward's department.

Q. Were you ever in the fire room?

A. No.

Q. Or the engine room?

A. No.

Q. Do you know what a retarder is?

Objected to by Mr. Freedman.

A. I know what it is to see it. It is a bent piece of steel that goes into the boiler tube.

Objected to by Mr. Freedman as irrelevant.

Q. You have never seen *n*one?
A. Only pictures of them.
Q. You say the lights on this ship blinked?
A. Yes.
Q. Five to eight minutes?
A. Yes.
Q. What day was that?
A. On the 11th.
Q. Of February?
A. Yes.
Q. What year?
[fol. 153] A. 1934.
Q. And at that time you were where?
A. There in the galley making cake.
Q. This happened about what time?
A. After 4 o'clock.
Q. Well, can you make it a little more definite? Was it shortly after 4?
A. Yes.
Q. And you were in the galley?
A. Yes.
Q. And had been there for how long?
A. All day.
Q. And all that you observed is the fact that the lights were out?
A. The lights blinked and were dim and then they went out, and they were out 5 to 8 minutes.
Q. And you don't know what caused that?
A. I do know it was due——
Q. How do you know?

Mr. Freedman: Let him answer.

A. Just to the change from steam to air.
Q. Did you see them change from steam to air?
A. I knew that.
Q. How did you know?
A. Maybe I walked right past the galley when the dining room closes. I know they were changing from steam to air. I didn't see them do it, but I knew they were doing it.
[fol. 154] Q. How do you know?

A. Because I saw them hook up the air holes in the back. I was walking past the fireroom. I know it was the early part of the day.

Q. What time?

A. I do not know.

Q. What do you mean by the early part?

A. In the afternoon.

Q. The early part of February? Wasn't it sometime in the morning?

A. It was the afternoon.

Q. You don't know when it was?

A. It was in the afternoon, and around the afternoon of that day I saw the man hook the hose up.

Q. Why did you say it was the early part of the day a moment ago?

A. I don't recall—the late part of the day.

Q. You spoke of having heard a conversation between Mr. Taylor and the Captain of the ship at Colon?

A. Yes.

Q. Can you fix the date?

A. I can't really say the date.

Q. Sometime in the evening?

A. It was about 7 o'clock in the evening.

Q. At night?

A. Yes.

[fol. 155] Q. You heard the Captain say there was no doctor available?

A. No. He couldn't get in touch with the agent.

Q. When did the ship leave Colon?

A. 7 o'clock the following morning.

Q. And a few hours later got to Pedromeguill?

A. The first lock, and the Public Service doctor came aboard.

Q. Did the doctor see Taylor?

A. No. Mr. Taylor was on watch.

Q. How do you know the doctor did not see him?

A. Because there wasn't any one around that part of the ship where the galley is situated, or I could see him.

Q. Where is the galley situated?

A. Aft number 3 hatch.

Q. You didn't see the doctor come aboard?

A. I saw him come aboard and leave.

Q. How long was the doctor on board?

A. From 20 minutes to half an hour.

Q. And where was he?

A. Up in the Captain's quarters.

Q. The Captain's quarters are on the bridge?

A. Under the bridge, amidship house.

Q. And the doctor was taken off the ship?

A. Yes.

Q. Some 45 minutes later?

A. Yes.

Q. Who was the steward on board?

[fol. 156] A. A Spanish fellow by the name of Frank Zarzerraga.

Q. You said you were leaving Philadelphia when you noticed Taylor's foot?

A. Yes.

Q. When did you leave Philadelphia?

A. I don't know the date.

Q. That was on the voyage to the West Coast?

A. Yes, sir.

Redirect examination.

By Mr. Freedman:

Q. You testified before under direct examination that Taylor was hurt on February 11, 1935, and then when Mr. Wolff questioned you he asked you whether it was 1934. I do not know whether I understood the question properly, but I ask you now to tell us what date it was?

A. It was 1934.

Q. How long have you known Taylor?

A. About 14 months.

Q. Then it couldn't possibly have been 1934?

A. I have it right here (Witness examining small book).

Q. Will you look at the discharge and make sure of that, so that we have it straight on the record.

A. 1935.

Q. Can you verify that from your discharge?

A. Yes.

Q. How long have you served with the Calmar Line?

[fol. 157] A. I joined the Calmar September 29, 1930, as a mess boy and left it in 1935.

Q. Do you expect to go back to the Calmar?

A. I am waiting every minute every day.

Q. Now, I would like you to tell me whether or not you are sure that the blinking lights you described before and the call that Mr. Taylor made on you for treatment both happened on the same day?

Mr. Wolff: That is objected to as not proper re-examination.

A. The same day.

Q. You are absolutely sure of that?

A. Yes, sir.

Q. I would like to clear up a little bit about the time that the vessel took to get from Colon to the point where Mr. Taylor was removed from the ship. How long was it from the time that the vessel left Colon until the time when the Public Service doctor came on board the vessel?

Objected to by Mr. Wolff as not proper re-examination.

A. About 6 hours.

Q. And then how long after that was it before you got to the point where they took Mr. Taylor off the vessel?

A. When we left Colon until Mr. Taylor went off, and it was 6 hours.

Q. I mean how long was it from the time he first asked for — doctor until the doctor arrived?

[fol. 158] A. From the time he first asked for a doctor and the doctor arrived was 18 hours.

Q. When you first came into Colon and then left, how long was it until the time that Taylor was removed, how long from the time you came into Colon?

A. 18 hours.

Recross-examination.

By Mr. Wolff:

Q. Did you discuss your testimony with Mr. Freedman?

A. No sir.

Q. You have not?

A. No.

Q. You didn't give Mr. Freedman a statement of what you wanted to say here to-day?

A. No, sir.

Q. You did not?

A. I came up here——

Q. Just answer the question?

Mr. Freedman: Let him do so.

The Witness: I stated everything to Mr. Freedman as I stated here.

Q. Did you give him a statement?
A. Yes, sir.

[fol. 159] (Trial of the cause resumed Tuesday, June 23rd, 1936, at ten o'clock A. M., in the presence of the Court and counsel for the respective parties.)

(After unreported colloquy between the Court and counsel.)

The Court: Mr. Freedman, you are at liberty to have notes of the testimony taken, or not taken, there being no official reporter appointed for this Court, as you please. If, however, you wish them to be used as the official notes of the trial, then you present them to the Court for that purpose, and he will treat them as the official notes. Do you desire the notes of testimony and evidence to be regarded as the official notes of the Court?

Mr. Freedman: I do, sir.

The Court: Then the stenographer is directed to follow the usual practice of supplying counsel with copies as soon as transcribed, the party paying for the copies that he receives. Is there anything else?

Mr. Wolff: Is Mr. Taylor here?

Mr. Freedman: No.

Mr. Wolff: On Friday, Saturday morning last, we, for the first time, received information about this case, which has a vital bearing upon the issue, such as made it necessary for us to recall the libellant, Mr. Taylor, for further cross examination. On Saturday I served this notice on Mr. Freedman. I will read it.

[fol. 160] Mr. Freedman: What time Saturday?

Mr. Wolff: Saturday afternoon, your office was closed.

"June 20, 1936.

Messrs. Freedman, Goldstein and Pechner, Franklin Trust
Building, 15th and Chestnut Streets, Philadelphia, Pa.

Taylor vs. Calmar Steamship Corporation

Gentlemen:

We hereby notify you that we shall require the attendance, in the Court Room, when the trial of the above case is resumed on Tuesday next, June 23rd, at 10 a. m. daylight saving time, of the libellant, Charles W. Taylor, in connection with the medical testimony which we shall offer, and for such further cross examination as we may deem necessary, and that we shall also require him to have with him the abstracts from the clinical records which you offered in evidence.'' Now, a further cross examination of Taylor is essential to the proper prosecution of this case, and counsel has seen fit to keep the man from the court.

Mr. Freedman: For two days they had him on the stand and they harassed him.

The Court: We will not have any wrangling about it. You were notified, I understand, and the notice was delivered at your office after it was closed. The first question is, did you get the notice?

Mr. Freedman: Yes, sir; I don't deny that, sir.

The Court: Then you had notice that he would be required to be present for further cross examination. Now, did you produce him, or not?

[fol. 161] Mr. Freedman: I don't think that——

The Court: It is not a question of that.

Mr. Freedman: I did not produce him, sir.

The Court: Are you willing to produce him?

Mr. Freedman: If Mr. Wolff——

The Court: Do not do anything but answer the questions, then I will give you the opportunity to explain it to your heart's content. Do you intend to produce him?

Mr. Freedman: No, sir.

The Court: All right, now, if you have any explanation to offer, you can do so.

Mr. Freedman: For two days in succession they had the Libellant on the stand, and they could have asked him——

Mr. Wolff: They——

Mr. Freedman: Then we closed our case, rested. I don't see how they can possibly require him to come back here. If they wanted him in court, they knew how to get him.

The Court: You have a perfect right to take the position you have taken, if, in your judgment, that is a justifiable position, but if you take it, you must take the consequences. You have the answer, have you taken that, Mr. Stenographer? You have his answer he will not produce the libellant for further cross examination?

Mr. Wolff: And he will take the consequences.

The Court: I don't think he agreed to take the consequences. That was an observation of my own, that he would take the consequences.

[fol. 162] Mr. Wolff: We have no way of subpoenaing this man.

The Court: With a party plaintiff I don't think a subpoena is required, but that doesn't answer my question. Counsel has a perfect right to have his own judgment as to whether he will produce a witness, or whether he will not, and he has decided that he will not produce him. What is the next step?

Mr. Freedman: It is not up to me, sir.

Mr. Wolff: You refuse to produce him, we have that on the record. We will go on with our testimony. Your Honor will not make a ruling directing counsel to produce the plaintiff?

The Court: I will not direct counsel to continue their trial in any way, that is for them to decide, not for me. It is up to you to decide what you will do.

Mr. Wolff: We are going on. Did you produce the exhibits?

Mr. Freedman: Yes, sir, we have the exhibits here.

Mr. Bull: I wonder if you would let us have them.

The Case for the Respondent

Leo Buerger, 275 Central Park West, New York City, Sworn:

By Mr. Bull:

Q. Will you state your qualifications?

A. Physician and surgeon, graduated 1901, connected for many years with the Mount Sinai Hospital in New York [fol. 163] City, attending surgeon Bronx Hospital, attending surgeon Beth David Hospital and several other hospitals, professor of clinical surgery and urology at the New York Polyclinic and Medical School, professor of surgery and urology at the College of the Medical Adventists, Los Angeles, California.

Q. Will you state what experience you have had with Buerger's disease?

A. I have made a study of this disease since 1904, devot-

ing my attention not only to the pathological aspects, but also to the clinical phases of the malady.

Q. Can you state how many cases you have——

Mr. Freedman: Objected to, may it please the Court.

Mr. Bull: Qualifications, if your Honor please.

The Court: Will you repeat the question?

(Question repeated.)

The Court: He is an expert, I will allow it.

A. Thousands of cases of the circulatory disturbances of the extremities, including thousands of cases of Buerger's—so-called Buerger's disease—have come under my observation and study since 1904, both at the hospitals and in my private practice.

Q. Can you state where it got the name Buerger's disease?

A. The name Buerger's disease was given to it by the medical profession, and I believe that it began or started here in Philadelphia. The name that I gave it was thrombo-angiitis obliterans in 1908.

[fol. 164] Q. Are you the Dr. Buerger who gave it the name of Buerger's disease?

A. I am the Dr. Buerger whose name the disease bears.

Q. Dr. Buerger, what is Buerger's disease?

A. Buerger's disease is, in my opinion, primarily——

Q. Just a minute, Doctor. Will you start that over again, what is Buerger's disease?

A. Buerger's disease is primarily an inflammatory process, an inflammation of the arteries and veins, usually beginning in the domain of the feet and legs, sometimes in the hands and arms, and possibly also, but less frequently, in other of the larger arteries of the body.

By the Court:

Q. I got the idea it is a sort of form of gangrene.

A. I am coming to that. Coincident with this inflammation in the walls of the vessels there is, of course, extensive clotting or thrombosis within the lumen, the channels of the arteries and veins. Following this there comes a process of organism, or fibrous tissues, or connective tissue, or scar tissue replacement, so that the affected parts of the arteries and veins are converted into hard fibrous parts. Beginning over small areas it gradually progresses, sometimes ascending continuously without interruption, so that after weeks or months and years, large territories of the arterial distribution are involved, closing off the circulation of the member affected, interfering with the nutrition of the parts, and followed subsequently by the effects or secondary effects of this process, not by manifestation of the disease itself, mostly by lesions such as ulcers, fissures, [fol. 165] fulminating disorders, changes in nails, and changes in the skin, deteriorating and decedent changes, and finally a helcosising process and gangrene.

By Mr. Bull:

Q. Is Buerger's disease a disease or an injury, Doctor?

Mr. Freedman: Objected to as too ambiguous, "Is it a disease or an injury?".

The Court: That is a very intelligible question. If it is not clear to the doctor, from a surgical point of view, he may say so. Do you understand the question?

A. I understand it. Buerger's disease is an inflammatory morbid process or disease of the arteries or/and veins.

Q. Is it traumatic in origin?

A. In the sense of being the result of an inflicted violence, force, extraneous violence or extraneous force, Buerger's disease cannot be produced, nor can it be accelerated in its course or progress by such extraneous force.

By the Court:

Q. Do you regard it as due to a germ action?

A. From the appearances of the tissue under the microscope, from the similarity with other inflammatory processes, I believe that some organism or virus is in all probability responsible, although such has never been discovered.

Q. You have said in effect, as I understood your answer, that it wasn't traumatic necessarily in its origin, but isn't it true it is apt to develop following injury and develop in the injured parts?

A. No, that isn't my opinion, I can explain that if you desire me to.

[fol. 166] By Mr. Bull:

Q. Will you explain it, Doctor?

A. This question of the role a trauma or external violence may play in Buerger's disease is a moot question, particularly when it is well to look into what factors really influence the disease itself. There are two phases of the disease. There is the spontaneous evolution of the disease in the arteries and veins, in which trauma plays absolutely no role, the spontaneous malady caused by some agent, some agency or virus producing occlusive obliterative changes in the arteries, and subsequent impairment in circulation, that is one phase. The other phase of the disease is the one which is usually seen by the physician, and by the afflicted one, namely, the effects of poor circulation, the tissues becoming impaired in the sense that they do not have sufficient blood supply, are not properly pervaded with sanguineous flow, and therefore in that state they are more prone to respond in a detrimental way to the effects of trauma. Given a case in which the arterial blockage has occurred, with poor circulation, and allowing a trauma or violence to be superimposed upon one of the digits, or a part of the feet, if an injury, a discontinuity of the skin be produced, an abrasion, a hemorrhage, a fracture, a dislocation, a very definite sign of trauma, the effects of trauma of such damaged parts in the presence of thrombo-angiitis obliterans, or Buerger's disease, may not heal as rapidly as in the normal individual, may give rise to ulcers and in that way serious complication may be precipitated or may be accelerated.

[fol. 167] By the Court:

Q. The impression that makes on me, Doctor, is that whatever the cause of Buerger's disease is, that if it develops it is very likely to follow a trauma, isn't it, and to develop in the site of the trauma?

A. That isn't my conception, your Honor.

Q. What I meant is this, assume that this man stubbed his toe against a piece of iron and received a more or less severe bruise, and if it is true that there were developments in what to my mind is in the nature of gangrene, such as to require cutting away of the impaired parts, and finally resulting in the amputation of the leg, and resulting in symptoms which might be diagnosed as Buerger's disease, isn't that a thing that is likely to follow, that may follow—I won't say likely to follow but may follow—the original trauma? In other words, whatever causes it, if it is an infection, and if it is due to the presence of a germ, and Buerger's disease develops, comes from that, isn't that germ likely to find his home in the injured part?

A. My conception, your Honor, is somewhat different. Here is the position.

Q. I want you to straighten me out, I am not a medical expert, I am very likely to be wrong there, and what I want you to do is to give me the right idea.

A. May I take time to do it? I will be as succinct as I can. The organism, which never has been found, or the microbes that produce the arterial trouble, are of a different kind from those that cause infection in the ordinary sense. [fol. 168] They were not ever detected, they do not produce pus, they do not produce the ordinary signs of inflammation in the skin and subcutaneous or soft parts. Whatever these organisms are, their effects in thrombo-angiitis obliterans have long since spent their force before the advent of the changes in the members, of the parts. That is to say it has carried on what it does from one artery to another, it lasts a very short time, the arteries and veins have been converted into a closed cord, so that we couldn't isolate the organism, if there are any, or microbes or virus of the disease thrombo-angiitis obliterans from any participation in any subsequent events that may have taken place, either spontaneously or following the trauma in the distal part. Number two, it is true that parts are in a degree impaired in their nutrition, but we have to place, we have to postulate certain criteria according to where we can decide whether in a given case the consequences, the manifestations following the date of the alleged trauma, were part and parcel of the disease itself, spontaneously evolved, that would have occurred without trauma, and this condition that might be expected incited or provoked by trauma. These are the criteria, you have to have certain criteria, to distinguish the criteria that I have always followed, and which seem to have scientific foundation and support, and then when we have a trauma we must have immediately thereafter in the part that received the violence definite evidence of trauma, namely, abrasions, hemorrhage, dislocation, fracture or the [fol. 169] like, some definite sign of trauma. Then the question arises, is there a continuity; if there is, as there was in this case, if there was a hemorrhage and following the hemorrhage, and following this it would produce the signs, following that perhaps gangrene, we couldn't safely say that except by virtue of the fact that it produced a change in the tissue, noticeable, recognizable, visible, to enhance the chances of deterioration and the advent of gangrene. Let us suppose that in a given case, and that according to my reading of the notes occurring here, let us suppose that in a given case no factual evidence has been adduced to support the contention that there was an immediate change in and about the part that was traumatized.

Mr. Freedman: I don't want to interrupt——

The Court: Let him proceed.

The Witness (continuing): If we find as in the records, the photostatic record of the United States Marine Hospital, as I have read it, and I have them here, if we find that two days after February 11th, 1935, that two days after the alleged accident, there is no record or no report of ecchymosis, of hemorrhage, of abrasion, of discontinuity of the skin, in short, of any of the usual evidences of infliction of a trauma, two days after, in an examination by the United States Marine Hospital, that then a diagnosis only of ringworm was made, then subsequent to that on the 13th of March there were evidences of the helcosising dis- [fol. 170] integrating process, we must conclude that as far as we have evidence, as far as we have medical evidence of the fact, there is no sign in the records submitted to me. It may appear later that as a result of a violence changes were produced in the tissues, that because of the poor nutrition these changes arose, these changes gave way to other changes, and then in continuation a series of events without interruption, without healing, gangrene eventually set in. We must, therefore, in my opinion, reject causal dependency, or causal connection between the trauma and the events that transpired in this case, because of the fact that the criteria that I have laid down, which constitutes a causal relationship, have not been verified.

Q. I understand the idea, I think I do, that Buerger's disease is not defined as caused by trauma, but what I would like to know is this, this invisible and undiscoverable germ, which induces Buerger's disease, if it is lying around hunting for a victim, may it not light on a man who has had an injury, and the Buerger's disease not be caused by the injury, but follow it as a consequence?

A. There are two observations to make in order to clarify this question. In the first place, experience with many, many hundreds and hundreds of cases, delving into their history, and after all, that is the way in which certain information is obtained in medicine, does not lend support to the view that an antecedent trauma did so weaken in any of the cases the resistance of the patient that thrombo-angiitis obliterans did develop. Secondly, in almost all of the cases that have sustained trauma, we will find on care- [fol. 171] ful investigation of the medical nature and pathological nature of the claim, that the patient did have the disease for months or for years prior to the accident; so I take it here, because the records show that the microscopic examination of the so-called posterior tibial artery, which is the largest artery there, 6 cc's of which were examined and removed evidentually from the amputated member, that the report shows that that artery was converted into a fibrous—Those are the words, a fibrous narrow cord, "That multiple microscopic sections showed * * *", and I won't go into the intricate picture, it's in the photostate described that I referred to, but the picture was such as to be interpreted by the pathologist as that of Buerger's disease, was diagnosed as thrombo-angiitis obliterans, and according to my reading of it it was that picture which can only develop in arteries that have been diseased for a long time, certainly long before this trauma was inflicted on the 9th of February. Therefore, here we have an instance of prior thrombo-angiitis obliterans and subsequent trauma.

Q. Now, the impression that makes on me is this, that whether a man developed Buerger's disease would depend upon his condition at the time the injury was received, is that it? That is to say, if he had this Buerger's disease before he received the injury, and then he experienced his trauma, then Buerger's disease may follow as a consequence, is that it?

A. No, I just outlined altogether the Buerger's disease and the effects of trauma. Buerger's disease is a special malady that is confined, restricted altogether to arterial and [fol. 172] venous channels. It is similar to what is familiarly known as phlebitis. In this disease in certain studies they get elements in the skin typical of phlebitis. That is one thing. Any effect of trauma, if the man has already had Buerger's disease, is an independent thing, and it has no real reciprocal relation between impaired nutrition of the tissues and trauma. We should forget altogether about the antecedent Buerger's disease, and just say "Here is a man who has got poor circulation in this member". To clarify the situation let us absolutely discard and eliminate the existing Buerger's disease, because it is of no consequence, no relevancy to that study. The man has had Buerger's disease, his tissues are in poor shape, and, therefore, we have a man who has poor tissues, in which by virtue of the poor circulation, certain changes may take place independent of the trauma, such as took place here. All of these changes that took place in this man are all characteristic changes that take place spontaneously in Buerger's disease. If one wants to relate the effect of trauma to what happened, we have to establish these criteria, whether the evidences of trauma present hemorrhage, ecchymosis, abrasions, discontinuity of skin, fractures and dislocations, and did this continue and deteriorate uninterruptedly until gangrene set in. Here we don't, we did not have that. We have merely these signs that are part and parcel of the spontaneous orderly affliction of this malady and its effects.

[fol. 173] Q. I will not blame you for my inability to understand the situation, but let me put it in my own way in this fashion. I am subjected to an amputation, we will say, we will call that a trauma. I am in a healthy condition, my blood is in good shape. The wound caused by the incision may heal and give what you call a perfect result, that may happen, it usually does happen. On the other hand, I may be subjected to an amputation and following that gangrene may develop. The extremities in the neighborhood of the incision that is made to cut off my leg slough off, require to be cut away, and another further amputation to be made. That may progress until I have a developed case of gangrene. To what would that gangrene be owing?

A. Shall we take this particular case or any case?

Q. Take any case first, and then we will get to this particular case. Take an abstract case such as I have briefly outlined. Here are two men, subjected to the same amputation. The case of one man results in what you call a perfect result, and the other results in gangrene. To what would you attribute the difference in those two cases?

A. Where healing takes place in what we may regard as the usual and expected fashion, there we assume that the circulation was adequate, that no fundamental basic malady such as cystitis or diabetes was present to interfere with the healing process. Where healing does not take place, a number of causes may be instrumental. For instance, [fol. 174] poor circulation or Buerger's disease may be instrumental in the lack of healing properly, poor circulation due to arteriosclerosis, poor circulation coincidental with diabetes and other basis maladies, particularly such as reduce the vitality of the tissue and do not let them heal, and that is the causal distinction of the difference in issue in the two types of cases.

Q. The impression that makes on my mind is this, in the case that did not give a perfect result you would say that the real cause of that was the prior condition of the patient?

A. Yes.

Q. All right.

A. Yes, sir.

Mr. Freedman: I just want to object here to that part of the testimony which referred to conclusions of fact in this particular case. I ask that they be stricken from the record, as far as the conclusions on this particular case were concerned.

The Court: You will have to tell me what you mean.

Mr. Freedman: He said "as we have got here" in several places, he said that, and those are the references I have in mind.

The Court: The doctor's testimony will take care of itself. I don't understand he is testifying to any facts, he doesn't know anything about the facts in this case. He has answered the hypothetical question, takes the facts as disclosed to him, and his opinion, of course, would have [fol. 175] weight, greater or less, according to whether his fact premises were correct or incorrect. In other words, if you change the fact premises you probably will change the opinion he has given. He has only in mind the facts contained in the hypothetical question, pure and simple.

Mr. Freedman: I am not objecting to that, sir.

By Mr. Bull:

Q. Is this abstract from the clinical record marked the Libellant's Exhibit No. 5 the one which you said shows the sections of the artery?

A. It is.

Q. And what did you state that showed to you?

A. In the pathological and histori-logical report described in detail in the last paragraph of this abstract from the clinical record of the Stapleton Hospital, Stapleton, New York, I find they substantiated my recollection as given previously, and my testimony regarding the fact that the posterior tibial artery of the right leg was found to be in an elongated narrow cylindrical fibrous cord, about 6 cc's in length that microscopic multiple sections showed essentially similar alterations—The details are of record here, and I don't think you want me to read them.

Q. I just wanted to confirm that, Doctor. Now, Doctor, will you listen carefully while I give you this hypothetical question. Assume that at about four o'clock in the afternoon [fol. 176] of February 9th, 1935, the libellant in this suit was entering the boiler room of a steamship and the lights went out. That after the lights went out he turned to his left in the boiler room, and after taking one or two steps, he stubbed his toe of his right foot on a pile of retarders, which are twisted steel bars, about seven feet long, two or three inches wide, and one-eighth of an inch thick, cutting his shoe on the side and bruising one or more of his toes. That he continued with his work until about eight o'clock that evening, and that the following day he had his toe washed with a boric acid solution. That on February 11th, 1935, two days after, he went to the Marine Hospital at Baltimore, where his condition was found and the treatment given him is as shown on the abstract from the clinical records of the Baltimore Hospital, which have been marked Libellant's Exhibit No. 1, and which I show you.

Now, assume further that he received out-patient treatment at the Baltimore Marine Hospital until February 16th, but did not report to a hospital thereafter until the latter part of February or early in March, when he went to the United States Public Health Service, District of Philadelphia, and received more medicine. That thereafter at Philadelphia he signed on the steamship "Losmar" for a voyage to the west coast of the United States, and on the way down to the Panama Canal he commenced to have severe pains in his right foot, and on March 11th, 1935, he requested to see a doctor. On March 12th, 1935, he was taken ashore to Gorgas Hospital in an ambulance. That at Gor- [fol. 177] gas Hospital the findings and diagnosis were given as shown in the abstract from the clinical record, which has been marked Libellant's Exhibit No. 2, and which I now show you.

Now, assume further, Doctor, that on March 27th, 1935, fifteen days after his admission to Gorgas Hospital, the fifth toe of his right foot was amputated, that he remained at Gorgas Hospital until May 4th, 1935, when he returned to New York, arriving there on May 13th, and entering the Marine Hospital at Ellis Island. That there his ailment was diagnosed as shown on the abstract from his clinical record, which has been marked Libellant's Exhibit No. 3, and which I also show you.

Further assume that he remained at the Ellis Island Hospital until about August 7th, 1935, when he was transferred to the Marine Hospital at Stapleton, Staten Island, where he remained until October 3rd. That at Stapleton, the findings, diagnosis and treatments were as shown on the abstract from his clinical record which has been marked Libellant's Exhibit No. 4, and which I also show you, and that his right leg was partially amputated on September 6th, 1935, while at Stapleton, below the knee, because of Buerger's disease.

Now, Doctor, assuming those facts, can you state whether the stubbing of the Libellant's toes on February 9th, 1935, was, in your opinion, a competent producing cause of Buerger's disease?

Mr. Freedman: Objected to, he says "Because of Buerger's disease it was amputated, because of Buerger's dis- [fol. 178] ease". That is a conclusion I don't think he has a right to make. He says in the hypothetical question, he says that the leg was amputated because of Buerger's disease; and in the second place——

The Court: The doctor is asked and is answering a hypothetical question, and if the question so states, that is a part of his answer.

Mr. Freedman: In the second place, he stated "Did it in this case cause the amputation or the Buerger's disease", and in the direct examination, if your Honor please, your

Honor ruled on how that should be stated, and it was for the jury or the Court to find what actually did happen.

The Court: That distinction is, I think, well taken, it is often ignored, and I will overrule it and allow you an exception.

(Exception noted for the libellant.)

Q. Can you, Doctor, state whether this stubbing of the toes on February 9th was, in your opinion, the competent producing cause of the Buerger's disease?

The Court: You do not mean that question.

A. It may have been the competent cause of the origin or production of Buerger's disease.

The Court: The man stubbing his toe would not be the cause of anything except a little trauma. The question is whether the injury caused it, not whether the stubbing of [fol. 179] the toe would cause it.

Q. Assuming those same facts, Doctor, would, in your opinion, the stubbing his toes and the bruising of some of those toes cause the Buerger's disease?

A. It could not have caused the Buerger's disease.

Q. Assuming those same facts, can you state whether or not the stubbing of his toes, or the resultant bruising of any of his toes, on February 9th, 1935, caused or precipitated the Buerger's disease?

A. Did not either cause or precipitate the Buerger's disease.

Q. In forming your opinion, which you have expressed, have you found it necessary to disregard or disagree with any of the findings of the Baltimore Marine Hospital, as shown by the abstract from the clinical record, which has been marked Libellant's Exhibit No. 1?

A. I have found it quite unnecessary to disregard, take issue with or find fault in any way with any of the findings of the United States Marine Hospital on this clinical record, but have taken them in forming my opinion as they are therein stated.

Q. Can you state whether or not there is anything in any of these, or in connection with the injury which was testified to, that would indicate that the diagnosis of ringworm was improper or incorrect?

A. I can find no reason to take the view that the diagnosis of ringworm of the right foot was incorrect.

Q. You have examined, have you, Doctor, these abstracts of the clinical records which have been marked Libellant's [fol. 180] Exhibits Nos. 1, 2, 3 and 4?

A. I have examined them and copied them by hand.

Q. And in any of those have you found any history or evidence of a traumatic injury to the Libellant's right foot?

A. I have not, sir.

Mr. Bull: All right.

Cross-examination.

By Mr. Freedman:

Q. To confirm a diagnosis of ringworm, isn't it customary or proper to take scrapings of the toes?

A. I don't know whether I am qualified as an expert on skin diseases. If counsel believes I am an expert on skin diseases I desire to inform him that he is mistaken. I am not an expert on skin diseases. I simply answered a question stating that I had no reason to believe that the diagnosis in a certain record was wrong.

Q. Doctor, in your opinion, assuming that Buerger's disease is present, could a bruise, such as Taylor alleged he received, set off the chain of events, such as we have heard, which finally led to the amputation?

Q. I have already answered that in the negative. I have answered that already in the negative as an answer to counsel's hypothetical question, although I do not think that counsel used the word "bruise". He used the term "stub-[fol. 181] bing of the toe", and we can add to that anything in the phenomena, external manifestations, objective signs that supervened after the infliction of the alleged injury, taking all those into consideration I again say, I reiterate that none of the events that followed could be in any way causally related to the unforeseen, unexpected episode, namely, the traumatic event.

Q. You stated before, as I understand it, Doctor, that an abrasion would contribute in some way to the ultimate result, namely, amputation. Now, assuming that Taylor had such an abrasion or bruise in this case, isn't it possible that this may have precipitated in some way the ultimate amputation?

A. Counsellor, I answered in some length, perhaps in too great length, all the criteria I had set before myself in order to come to a conclusion regarding the causal relation. Here you now put and propound another hypothetical question as to whether, given a man such as we have heard about here today, who did sustain an abrasion, could subsequent events be related to the injury. I must answer you that an abrasion, concerning which I have not heard anything before—an abrasion was mentioned by me as one of the signs of traumatic injury—if there had been an abrasion in this case, if the site of the abrasion itself, the locality of the abrasion healed, there would not be any causal connection; but if the site or locality of the abrasion never healed, but became transformed, transmuted into a generating, deteriorating lesion, such as we call an ulcer, and from that came the trend of events leading to gangrene, then we [fol. 182] would have an indication, a picture that would justify us in relating the eventual issue to the force applied, but that we have not got here.

Mr. Freedman: That's all, Doctor.

By the Court:

Q. Why do you say you haven't that here, that is the very thing you do have here?

A. Your Honor, I can only depend upon what I have read in these records.

Q. I understand, and that is what I want to make clear what you understand to be the fact. When you say we don't have that here, those are the very findings we do have here.

A. I haven't been able to find them, and I have searched these records carefully.

Q. What we have here is that this man struck his right foot against a piece of iron, the result of which he suffered from a cut and a bruise, for which he was treated, we will assume, properly treated. The wound was frequently cleansed, and applications which I suppose were intended to have some palliative effect, were made to the wound, and lotions, which were supposed to have a cleansing effect, I assume were given him, and there resulted—I won't say resulted—but there followed a condition which I understand you have all diagnosed as Buerger's disease. Now, that did follow.

A. May I state the premises, upon which my inference was drawn? Naturally it cannot go as far and is not as comprehensive as those that have been at your disposal. I have only the facts that have been disclosed to me and the [fol. 183] facts that appear in these hospital records. Now, if these are the facts, that the man sustained an injury on the 9th, there is nothing anywhere in these records to support the allegation that there was a cut, that there was a bruise, that there was an abrasion.

Q. Suppose the evidence clearly discloses that there was, as you call it, a cut, there was a breaking of the skin, then what?

A. Then there must be a continued, uninterrupted continuity, especially and in time a sequence of the deteriorating events at the very site, at the very locality of the cut, bruise or abrasion. Here the allegation is that the outer side of the foot was injured, and the lesions that appeared were between the two toes, right in the web, in the web, which is a very fertile site for the spontaneous development of these things, way down in the web between the fourth and fifth toes, that's what the record states.

Q. I don't know that the layman is able to appreciate or follow the surgical mind. I am going to make a simple statement of fact. From a lawyer's point of view the facts briefly outlined are these: This man, as I have said, struck his toe against a piece of iron. The result was an injury to the toe, resulting, among other things, in a breaking of the skin, a bruise, a swelling, that was subject to treatment, lotions, salves, cleansing of the injured parts at frequent intervals in an effort to allay, I assume, the inflammation. Now, there followed from there, instead of being allayed, a [fol. 184] *a* continued progression, so that the parts became so deteriorated and infected they were cut away. It further continued progressively to such an extent that the toe was removed, I am not sure about that, but I think a second operation resulted in another toe being removed. It continued to progress to the point that it was deemed by surgeons necessary to amputate the leg some distance above the heel. Now, if that is the set of facts, would it change the opinion you have just given?

A. If it was admitted that there was a bruise, that the bruise never healed, or an abrasion, which never healed, or a cut that never healed, these were the criteria that I laid down at the very beginning. I couldn't find them, but if they did exist, that would change my opinion as to the influence of the trauma.

The Court: That makes it clear. You were expressing your opinion naturally and properly on the facts presented.

Mr. Wolff: We brought Dr. Buerger down to help the Court, and we wanted Taylor so that Dr. Buerger could help us, and they would not let us.

Harry V. Spaulding, 115 East 61st Street, New York City, sworn.

By Mr. Bull:

Q. Dr. Spaulding, will you state your qualifications?

[fol. 185] A. I am Director of Surgery at the Broad Street Hospital in New York City. I am attending surgeon at the Reconstruction Hospital, the traumatic unit of the Post Graduate Hospital in New York, and I am past assistant director of surgery at the Department of Welfare in New York City, and past assistant surgeon at the Lincoln Hospital in the Bronx, and St. John's Hospital in Long Island City, and a fellow of the American College of Surgeons.

Q. How long have you been in practice?

A. 26 years.

Q. Doctor, did you in August, 1935, examine Charles W. Taylor?

A. I did.

Q. And where was that examination made?

A. At the Marine Hospital on Staten Island.

Q. Do you recall the conditions which you found at that time?

A. I do.

Q. Did you obtain any history of the case from Taylor, or from anybody else?

A. From Mr. Taylor.

Q. You asked him about it?

A. I did.

Q. Will you tell us what he told you as to the history of it?

Mr. Freedman: That is objected to.

The Court: Overruled.

[fol. 186] Mr. Freedman: Exception.

(Exception noted for the Libellant.)

A. He said that on or about the 27th of February, 1935, his right fifth toe began to pain him, and shortly thereafter, to quote him "it busted open". He said he had been treated at the Philadelphia Marine Hospital, they gave him a bottle of medicine, and the following day he boarded a ship and went to Panama. On the 12th of March he was admitted to the Gorgas Hospital in Panama, and it was not until the 27th that the fifth toe became gangrenous and required amputation. He was discharged from the hospital, returned to Ellis Island on May 13th, where further amputations were required. On July 22nd the fourth toe was amputated for a similar gangrenous process, and he was transferred to the Staten Island Marine Hospital in Stapleton on August 7th for the purpose of special treatment. I saw him on August 28th in consultation, to determine whether or not amputation should be done at a higher level. He informed me that at that time, in 1915, he had had a fractured vertebra, or ribs, and that in 1932 he had been operated upon for bunions. While he was in Long Island Hospital he was also operated on for the severance of one of the nerves that bind one of the sensory nerves. I examined him at that time on August 28th, he had lost the fourth and fifth toes, and there was a gangrene reaction beginning in the third toe. The first and second toes were swollen, reddened, edematous, and showed extremely poor circulation. The redness extended to a point about three inches [fol. 187] above the ankle. The foot as a whole was swollen and sensitive to pressure, and the wounds at the base of the fourth and fifth toes showed practically no repair reaction due to poor circulation.

Q. What was your diagnosis at that time, Doctor?

A. He had thrombo-angiitis obliterans, known as Buerger's disease.

Q. Did you make any recommendation with respect to treatment?

A. I thought the leg ought to be amputated.

Q. What?

A. I thought the leg ought to be amputated.

Q. Was this examination of yours made with the approval of Taylor and the physicians of the hospital?

A. It was in their presence.

Q. Did you ask him what, if any, injuries or ailments he had ever had to his feet before?

A. I did.

Q. Is that when he told you he had been operated on for bunions in 1932?

A. The only trouble he had ever had.

Q. The only trouble he had ever had?

A. That's correct.

Q. Doctor, what is Buerger's disease?

A. Buerger's disease is an arterial affliction, a blood vessel disease, in which the blood vessels become thickened, and as it were, blocked, causing additional impairment to [fol. 188] the circulation beyond. It is in many senses a localized arteriosclerosis.

Q. In your opinion is it traumatic in origin?

A. It is not.

Q. That is, it cannot be caused by a traumatic injury?

A. It cannot.

Q. Will you state whether or not a traumatic injury will incite, precipitate or aggravate the disease itself?

A. Under certain circumstances it may.

Q. What are those circumstances?

A. Massive injury to further damage the blood vessels. The advent of infection to an inflammatory process.

Q. Is that fast or slow acting?

A. That is immediate.

Q. Have you examined the abstracts from the clinical records, which have been offered in evidence here as Libellant's Exhibits 1, 2, 3 and 4?

A. I have.

Q. I ask you to look at Libellant's Exhibit No. 4 where it refers to a specimen tissue, do you see that?

A. Yes, sir.

Q. And does that indicate anything to you?

A. It indicates a pathological process of years' duration.

Q. You mean——

A. Many years.

Q. More than a year?

A. Yes, sir.

[fol. 189] Q. Will you listen, Doctor, carefully, while I ask you a long hypothetical question? Assume that at about four o'clock in the afternoon of February 9th, 1935, the Libellant in this case, that is Taylor, was entering the boiler room of the steamship "Losmar", and that the lights went out; and after they went out he turned to his left in the boiler room, and after taking one or two steps he stubbed the toes of his right foot on a pile of retarders, which are twisted steel bars, about seven feet long, two or three inches wide and one-eighth of an inch thick, cutting his shoe and bruising his foot, or little toe. That he continued to work until about eight o'clock that afternoon, and on the following day he had his foot washed with a boric acid solution; that on February 11th, two days after, he went to the Marine Hospital in Baltimore, where his condition was found to be and the treatment given is shown in Libellant's Exhibit 1, which I ask you to look at.

A. Yes, sir.

Q. That he received out-patient treatment at the hospital until February 16th, but did not report at any hospital again until the latter part of February or early in March, when he went to the United States Public Health Service, District of Philadelphia, and received more medicine. That thereafter at Philadelphia he signed on the steamship "Losmar" for a voyage to the west coast of the United States, and on the way down to the Panama Canal he commenced [fol. 190] to have severe pains in his right foot. On March 11th he requested to see a doctor, and on March 12th he was taken ashore in an ambulance to the Gorgas Hospital. That at the Gorgas Hospital the findings and diagnosis were made as shown on the abstract from the clinical record, which is marked Libellant's Exhibit No. 2, which I ask you to look at.

A. Yes, sir.

Q. On March 27th, fifteen days after his admission to that hospital, the fifth toe of his right foot was amputated. He remained there until May 4th, when he was returned to the United States, arriving at New York about May 13th, and entering the Marine Hospital at Ellis Island. That at Ellis Island Marine Hospital the ailment was diagnosed as shown on the abstract from the clinical record, which is marked Libellant's Exhibit No. 3, which I ask you to look at.

A. Yes, sir.

Q. That he remained there until about August 7th, 1935, when he was transferred to the Marine Hospital at Stapleton, Staten Island, where he remained until October 3rd,

1935. That at the Stapleton Hospital the findings and diagnosis and treatment were as shown in the abstract from the clinical record, which is marked Libellant's Exhibit No. 4, and which I ask you to look at. That I ask you also to consider the examination which you yourself made at that hospital on August 28th, 1935, and to assume that Taylor's right leg was partially amputated, that is, below the knee, on September 6th, 1935, it having been found that he had [fol. 191] Buerger's disease. Assuming those facts, can you state whether the stubbing of the Libellant's toe on February 9th, 1935, and the resulting bruising of his toe, was in your opinion a competent producing cause of the Buerger's disease?

A. I can.

Q. Was it?

A. It was not.

Q. Assuming these same facts, can you state whether the stubbing of the toe, the bruising of the toes by that stubbing against the retarders incited or precipitated the Buerger's disease?

Mr. Freedman: Objected to.

The Court: Overruled.

(Exception noted for the Libellant.)

A. I do not.

Q. That is, your opinion is they did not, you mean?

A. That's correct.

Q. In forming the opinion, which you have expressed here, have you found it necessary to disregard or disagree with any of the findings of the Baltimore Marine Hospital, as shown on the abstract of the clinical record, which is marked Libellant's Exhibit No. 1?

A. I have not.

Q. Have you read those abstracts over, and noted whether or not there was any evidence or history of a traumatic injury?

A. There is none in any of them.

[fol. 192] Q. Did you, when you examined Taylor on August 28th, 1935, endeavor to find all the history from him?

A. I did.

Q. Did he give you any history or any evidence of any traumatic injury at that time?

A. He did not.

Q. Did he say to you he did not have any?

A. He did.

By the Court:

Q. I don't understand that. You say all the records of the Marine Hospital do not indicate any existence of the receipt of any injury?

A. That's correct.

Q. Suppose as a point of fact there was an injury received on February 9th, would that change your opinion?

A. As to whether or not he had an accident?

Q. And the injury was an accidental one. You assume what you do in your opinion, and you say that in the Marine Hospital records there is an absence of any history of an injury. Suppose in point of fact on November 9th he did receive an injury, he stubbed his foot against an iron plate, resulting in a cut or breaking of the skin, resulting in a severe bruise, would that change your opinion?

A. It might alter my opinion if I know more of exactly what type of injury he had. If he had had a bruising of the skin I do not believe that that would have precipitated or would have caused the successive——

[fol. 193] Q. Suppose there was a breaking of the skin.

A. If there was a breaking of the skin, and there had been a healing of it.

Q. What?

A. If there had been a healing of it within a short period of time.

Q. All right, assume that after the cut, or bruise, or breaking of the skin, abrasion, or whatever name is proper to apply to it, suppose that it did not heal, did not heal properly, that he was subjected to the ordinary treatment of a washing of the wound, and the application of lotions and salves, and hot water, put in a heating box, and still it didn't yield to treatment, and didn't heal, then what?

A. If there was a succession of surgical events from the time of his accident right through to his amputation I don't think we can evade the relationship.

Mr. Bull: That's all.

Cross-examination.

Mr. Freedman: No questions.

DAVID WARREN KRAMER, sworn:

By Mr. Bull:

Q. Will you state your qualifications?

[fol. 194] A. Graduated 1912 Jefferson Medical College, assistant professor of medicine Jefferson Medical College, in charge of vascular clinic, Jefferson Hospital, assistant visiting physician and consultant of peripheral vascular disease at the Philadelphia General Hospital, visiting physician to St. Luke's and the Children's Hospitals, and attending physician in the Metabolic Division of the Jewish Hospital.

Q. How long have you been practicing, Doctor?

A. Since 1912.

Q. What experience have you had with Buerger's disease?

A. I have been interested in vascular diseases since 1922, and I have contributed various publications on arterial diseases.

Q. Have you written on Buerger's disease?

A. Included in some of the articles there has been inflammatory disease of the arteries, which have appeared in the Medical Clinic of North America.

Q. Will you state for us what Buerger's disease is?

A. Buerger's disease is an inflammatory disease of the——

The Court: I don't want to interfere with the examination or cross-examination of the witnesses, but haven't we had that question answered?

Mr. Bull: Yes, it is cumulative, but I don't know how to avoid it. We have to have a record.

The Court: If you want it on the record, it is your right to have it. I am not excluding it. I am merely suggesting that I recall I don't know how many times that question has been asked of different surgeons and medical men, and I [fol. 195] haven't heard one of them disagree with either.

Q. Will you answer very briefly?

A. An inflammatory disease of the larger blood vessels, the arteries and veins.

Q. What kind of disease?

A. An inflammatory disease of the larger blood vessels, arteries and veins.

Q. By a disease what do you mean?

A. Due to some infectious agent.

Q. Is it traumatic in origin?

A. No, it is not.

Q. Can a traumatic injury cause the disease?

A. It cannot.

Q. Will a traumatic injury in your opinion incite, precipitate or aggravate the disease itself?

A. I would not say so.

Q. Is the disease fast or slow acting?

A. It is an insidious chronic disease.

Q. Could you by referring to the abstract from the clinical record of Stapleton Marine Hospital, which has been offered in evidence as Libellant's Exhibit 4, can you gain any information there as to the duration of the case covered by that abstract?

A. I can only say that from their report that this individual had Buerger's disease, and assume that this was a case of Buerger's disease, and with the advanced patho- [fol. 196] logical findings, with our conception of the condition, and knowing how they observed it, it evidently existed for some time.

Q. When you say some time, do you mean a few days, a week, a month, a year or what?

A. I would rather say for years.

Q. I will have to ask you that long hypothetical question, will you listen carefully? Assume that about 4 o'clock in the afternoon of February 9th, 1935, the Libellant in this suit was entering the boiler room of the steamship "Losmar", and the lights went out, and after they went out he turned to his left in the boiler room, and after taking one or two steps he stubbed the toes of his right foot on a pile of retarders, which are twisted steel bars, about seven feet long, two or three inches wide, and one-eighth of an inch thick, cutting his shoe on the side, and bruising the foot or toe. That he continued with his work until about eight o'clock that evening, and on the following day he had his foot washed with a boric acid solution. That two days later, that is, February 11th, 1935, he went to the Marine Hospital at Baltimore, where his condition was found to be and treatment was given to him as shown on the abstract from the clinical record of the hospital, which has been marked Libellant's Exhibit No. 1, and which I show you. Assume further that he received out-patient treatment there at that hospital as described by that abstract until February 16th, but he did not return to a hospital thereafter until in the latter part of February, late in February or early in March, when he went to the United States [fol. 197] Public Health Service, District of Philadelphia, and there received some medicine for his right foot. That thereafter at Philadelphia he signed on the steamship "Losmar" for a voyage to the west coast of the United States, and on the way down to the Panama Canal commenced to have severe pains in his right foot. On March 11th he requested to see a doctor, and on March 12th he was taken ashore in an ambulance to the Gorgas Hospital. At the Gorgas Hospital the findings and diagnosis were as shown on the abstract from his clinical record there, which has been marked Libellant's Exhibit No. 2, and which I ask you to look at. Assume further that on March 27th, 1935, fifteen days after his admission to the Gorgas Hospital, the fifth toe of his right foot was amputated. That he remained at the hospital until May 4th, when he returned to the United States, arriving at New York on May 13th and entering the Marine Hospital at Ellis Island. That at Ellis Island Marine Hospital his ailment was diagnosed as shown on the abstract from the clinical record, which has been marked Libellant's Exhibit No. 3, which I also show you. Assume, as shown by that abstract, that he remained there until August 7th, 1935, when he was transferred to the Marine Hospital at Stapleton, Staten Island, New York, where he remained until October 3rd, and that at the Stapleton Hospital the findings and diagnosis and treatment were as shown by the abstract from his clinical record there, which is marked Libellant's Exhibit 4, and which I ask you to read. And will you also assume from that, Doctor, that on September 6th, 1935, it was the opinion that his [fol. 198] ailment had been diagnosed to be Buerger's disease, and that his right leg was amputated below the knee. Assuming all those facts, Doctor, can you state whether or not in your opinion the stubbing of his toe and the bruising of his toes, or his right foot, on February 9th, 1935, was a competent, producing cause of the Buerger's disease?

Mr. Freedman: Objected to.

A. I would say that it was not a contributing cause to Buerger's disease.

Q. Assuming these same facts, can you state whether or not the stubbing of his toe, the consequent bruising of the toes of his right foot on February 9th, incited or precipitated or aggravated the Buerger's disease itself?

A. I do not think so, as far as I can see from the records there is no evidence of any bruising. The only information we have here is that there was a ringworm of the right foot, and that the only other evidence as to whether or not this was a ringworm is the fact that he had the same condition between the fourth and fifth toes, which does not convince me or impress me as having been produced by any injury such as the stubbing mentioned in your question.

Q. Assume in addition, Doctor, that he did stub his toe, and bruised his toes. Would your answer be the same or any different?

(Question repeated at the request of the Court.)

A. It all depends upon the degree of the bruise. It would have to be a bruise with destruction of tissue, and would [fol. 199] have to be at the site of the bruise.

Q. What would have to be at the site of the bruise?

A. If a man stubbed his toe, the bruise would have to be where he stubbed his toe, and couldn't explain any other lesion between the toes. It would have to be a direct trauma. It would have to be a severe enough trauma to bring about destruction of tissue, and may I modify that and add that it would also have to show a continuation or sequence of events which would lead to the graver complication.

Q. Can you from the abstract of the clinical record, which has been marked Libellant's Exhibit 1, and which is dated from the treatment on February 11th, two days after this accident, can you form an opinion as to the extent of any bruise to the foot or toes of the Libellant at that time?

A. I cannot see any evidence here that could be related to a stubbing of a toe.

Q. Can you see anything there that would indicate a severe bruising of the toes?

A. There is no evidence in this report to show any signs of ecchymosis or discoloration.

Q. And those are what you find in bruises, are they, ecchymosis and discoloration?

A. Generally in a bruise, yes.

Q. If it is at all severe?

A. If it is severe you should see the destruction of the tissue.

Q. In forming your opinion, the opinion which you ex- [fol. 200] pressed in answer to the hypothetical question, did you find it necessary to disregard or ignore or disagree with the diagnosis of the Baltimore Marine Hospital?

A. No, I don't see anything there that would conflict with my conception of this case.

Q. Having before you the fact that the plaintiff testified that he received a traumatic injury by the stubbing of his toes on February 9th, and having before you also the abstracts from the clinical records, which have been marked Libellant's Exhibits 2, 3 and 4, can you find any basis for anybody disputing the diagnosis of the Baltimore Marine Hospital, which appears on Libellant's Exhibit No. 1?

Mr. Freedman: Objection to.

The Court: Sustain the objection, and I will give the Respondent an exception.

(Exception so noted for the Respondent.)

Mr. Bull: That's all.

By the Court:

Q. Did you hear the question that I addressed to Dr. Spaulding?

A. In reference to——

Q. The set of facts as to the extent of this injury, and what you might call the history of the injury, upon which he based his opinion?

A. I don't recall exactly.

Q. Let me repeat it in substance. Suppose instead of merely stubbing the toe, resulting in nothing except a pos- [fol. 201] sible bruise, there was an injury including the breaking of the skin, a severe bruising, sufficient to subject him to ordinary treatment, the wound having to be washed out and cleansed, lotions applied to it, salves applied, hot pack applications, hot water applications, finally heating box applications, that the wound did not heal, but it developed what we will call a sore, manifested by some of the witnesses who described it as a hole in the injured part, that following that there was a sloughing of gangrene, some deterioration of the tissue, making it advisable to cut off the deteriorated part, that the failure to heal continued, and they deemed it necessary to cut off the small toe, and then the toe next to it, still no healing, still no improvement, justifying the opinion that there should be an amputation of the leg, and the leg was amputated to some point between the knee and the ankle. If that was the state of facts, from which you were expressing an opinion, would it change the opinion you have expressed?

A. It would not change my opinion as to whether that caused Buerger's disease, because it couldn't. No trauma could cause Buerger's disease. However, if that bruise and injury that you speak of had occurred directly at the site of the point of trauma, then I would say it is possible that this individual who probably had Buerger's disease, was unfortunate enough in have the manifestations precipitated.

The Court: All right.

By Mr. Bull:

Q. What do you mean by the site, Doctor?

[fol. 202] A. It would be at the point of contact.

Q. Suppose it was an inch away?

A. I would not associate it.

Q. A half an inch?

The Court: Away from what?

Mr. Bull: Away from where the lesion is.

A. It all depends upon—Well, I don't see how you could get a lesion. If you are speaking of a bruise, or if you are speaking of a lesion that occurred somewhere else, a cracking of the skin, then I would say that that injury may have been purely coincidental, because the cracking of the skin is a manifestation, or a later manifestation of Buerger's disease.

Q. And a lesion between the toes is a manifestation of the disease, is that it?

A. It could be.

Q. If you had an abrasion or bruise on the outside or top of the toe, and your lesions were between the toes, in the web, would that in your opinion have anything to do with the lesion?

A. I don't think so.

Mr. Bull: That's all.

By the Court:

Q. Do you know what the cause of Buerger's disease is?

A. We assume that it is due to some infectious agent, but we have been unable to isolate any organism, or any virus, and the reason for that is that at the beginning of it, as you heard Dr. Buerger explain, when certain things occur, it [fol. 203] begins far back with some infection, and then by this bruise or cut, maybe it was unrecognizable, and it heals, and that individual can go on for years or months, certainly for years without knowing of it, not until they had a blocking of the circulation. No one is able to say without this clogging up, with the other vessels the man can carry on, the individual can go on, and then when later he begins to get the manifestations, at that time we cannot find the organism.

By Mr. Bull:

Q. Have they found ways of treating this disease?

A. Yes, we have.

Q. What is that?

A. We have.

Q. When an amputation is performed, are there ways of taking care of the spread of the disease after that?

A. In the past few years we have made, the medical profession has made excellent strides in the treatment of Buerger's disease, not only in obviating amputation and operation, but even controlling progress. Now, of course, the treatment is purely in a round-about way. We cannot attack the disease itself, but with this newer apparatus such as the glass boot, you have heard publicized, or some of the mechanical preparations that have been used, by electricity and an intravenous therapy, we are able in many cases, we don't succeed in 100%, but I should say from 60%, or 70%, or 80%, of those patients are definitely improved, considerably improved.

Q. The fact that a man has Buerger's disease, and has one [fol. 204] of his limbs partly amputated, does that mean that he is necessarily always going to have to be under care and treatment, and that it will be fatal to him eventually?

A. Well, I advise those patients to keep under observation. While the chances for getting by are certainly better, however, it need not be very frequent, but in a special case that needs care, it should probably be seen once a week, and as they are controlled that can be stretched out to once a month, but I think that when possible they certainly are better off with regular periodic observation.

Q. But is it going to necessarily be fatal, are they going to have other operations, necessarily?

A. Some cases, I think the majority of the cases get by. There have been some reports where some men have been able to cut down the percentage of operation, amputations, to about 2% or 3%, which is too enthusiastic. However, I think that when we can control and improve 70% to 80%, I think that is a pretty good figure.

Mr. Bull: No more questions there, your Honor.

Mr. Freedman: I want to ask the doctor one or two questions.

Cross-examination.

By Mr. Freedman:

Q. Can an injury or abrasion be described as an inflammatory lesion?

A. Not an injury, no.

[fol. 205] Q. Can an abrasion be so described?

A. An abrasion can be produced by inflammation, yes.

Mr. Freedman: That's all.

(At this point a luncheon recess was declared until two o'clock P. M.)

(Hearing of the cause resumed, pursuant to adjournment, at two o'clock P. M., in the presence of the Court and counsel for the respective parties.)

Mr. Freedman: The Libellant is in court, sir.

Charles W. Taylor, recalled:

Mr. Freedman: May it please the Court, I should like at this time to determine the purpose of this recross examination, whether they are calling him for anything that——

The Court: That will be elicited by the questions that are asked. It is all right to have a statement of what is supposed to be proved, but ordinarily it takes up time, and it can be better brought out by questioning.

[fol. 206] By Mr. Bull:

Q. How long did you say you had been going to sea?
A. Between 1908 and 1909 I started.

The Court: Let me say to counsel, do not go over ground that has already been gone over. Limit yourself to what you specially want.
Mr. Bull: I am going to do that, Your Honor.
The Court: I assumed you were. I was not condemning you, I merely suggested that is what you do.

Q. Were you at sea in 1931, 1932 and 1933?
A. 1932, 1933 and 1934, the last ship that I was on, to the best of my recollection, was the steamer "C. and B.", belonging to the Cleveland and Buffalo Navigation Company, and their headquarters, if I am not mistaken, is at Cleveland, Ohio.
Q. Was that in 1932, 1933 and 1934?
A. This is 1934.
Q. In 1931 you were not at sea then?
A. I was at sea, but the ships that I was on I do not recall, for this one reason, that the Great Lakes we do not get any discharges.
Q. Then what were you on in 1932?
A. That I couldn't recollect.
Q. Do you recall telling Dr. Spaulding that you were operated on in 1932 for bunions?
A. Yes, sir.
Q. Where was that?
[fol. 207] A. City of Detroit.
Q. In a hospital?
A. Yes, sir.
Q. Detroit Marine Hospital?
A. Yes, sir.
Q. What else did they do there besides operate on your foot for bunions?
A. That's all.
Q. What foot was that?

A. The right foot.

Q. There was nothing but bunions?

A. That's all.

Q. What ship were you on when you went into that hospital just before that?

A. On the Great Lakes our ships generally lay up as soon as the fall sets in, between September, October and November, and this was the following March I went into this hospital.

By the Court:

Q. You mean the Great Lakes are not open for navigation?

A. No, sir.

By Mr. Bull:

Q. What ship were you last on before you went there in March, 1932?

A. That I couldn't recollect, it was one of the D. and C. Company's ships.

Q. D. and C.?

[fol. 208] A. Yes, sir, Detroit and Cleveland Navigation Company.

Q. Where are they, in Cleveland?

A. No, their headquarters are in Detroit.

Q. At that time, in March, 1932, when you went into the hospital in Detroit, you were living in Detroit, were you?

A. Yes, sir.

Q. Was your address then 165 Howard Avenue, Detroit?

A. Well, that I couldn't even say.

Q. Did you ever live at 165 Howard Avenue, Detroit?

A. I have lived in numerous rooming houses on that street, but that one street number I could not recall.

Q. That is on Howard Street, Detroit?

A. Yes, sir.

Q. While you were in that hospital, the Detroit Marine Hospital, you were there from March 16th, 1932 to May 23rd, 1932, weren't you?

A. Yes, sir.

Q. You were there all that time for bunions?

A. One bunion.

Q. One bunion?

A. On my right foot, yes, sir.

Q. Whereabouts on the right foot?

A. On my big toe.

Q. Did you at that time have any bone resection done? Do you know what that means? Any bone taken off from any of your toes.

[fol. 209] A. I couldn't, to the best of my knowledge—Doctors does not tell a patient anything about an amputation besides that they just say it's an amputation, and I asked them "Is this a severe operation?" "Oh, no", he says, "That's just a minor case". That's all they told me.

Q. Then is that all they told you, that this was just a minor operation and nothing else?

A. Yes, sir.

Q. Then is it on that you base your statement to Dr. Spaulding, as a part of the history of this case, you had been operated for a bunion or bunions in 1932?

Mr. Freedman: That is objected to, he is asking him on what he based his opinion.

Mr. Bull: And the statement of Dr. Spaulding.

The Court: Do you want a ruling?

Mr. Freedman: All right, I will withdraw it.

Q. Can you answer that, Mr. Taylor?

A. To the best of my recollection, anything that I said to Dr. Spaulding, at the time I was in such severe pain and agony, that I do not recall what I said to Dr. Spaulding.

Q. Do you have the hospital records from Detroit?

A. I haven't got them myself, no, sir.

Q. Did you ever attempt to get them?

A. That question I couldn't answer.

Q. Did you tell Mr. Freedman about them?

A. Yes, sir.

Q. Do you know whether Mr. Freedman tried to get them?

[fol. 210] A. I think he did.

Q. You think he did?

A. Yes.

Mr. Bull: I will call for their production.

Mr. Freedman: There is nothing about this I want to hide—That's all, I will withdraw it. This was a letter in answer to a letter from Dr. Seltzer.

The Court: You call for it?

Mr. Bull: I call for the hospital record, an abstract of the record, or any other record of the hospital when Mr. Taylor was in there in 1932.

The Court: What is your answer?

Mr. Freedman: The hospital record I have here is an answer from the Detroit Marine Hospital to Dr. Maurice Seltzer.

The Court: Do you produce it?

Mr. Freedman: Yes, I have that right here.

The Court: Let the record show that counsel for the Libellant produces a letter in answer to the call.

Mr. Bull: Is that all that you have, or received?

Mr. Freedman: That is absolutely all we have, or have received, from the Detroit Marine Hospital.

Mr. Bull: I offer that in evidence as Respondent's Exhibit No. 2.

Mr. Freedman: The only objection I have to that is that it is not under seal, it is only a letter from the doctor in the hospital.

[fol. 211] The Court: There is no use encumbering the record with an argument. The letter is offered. Do you object to it, or don't you?

Mr. Freedman: Yes, sir.

The Court: Overruled, and an exception allowed the Libellant.

(Exception so noted.)

Mr. Bull: This is addressed to Dr. Maurice Seltzer, I believe that Dr. Seltzer testified here.

"U. S. Marine Hospital, Detroit, Michigan

Dr. Maurice Seltzer, 7967 Castor Avenue, Phila., Penna.

Sir:

In compliance with your request of May 17, we submit the following information in the case of Mr. Charles W. Taylor, Merchant Seaman, 659 Howard Avenue, Detroit, Michigan.

The patient was admitted to this hospital on March 16, 1932, his chief complaint being a marked hallux valgus of the right great toe, which was causing consideration pain at the time of admission, and according to the patient's statement had been causing trouble for some years, but had become much more painful in the past six months, to the extent that it interfered with his work.

At the time of admission examination revealed a marked hallux valgus deformity which was extremely painful.

[fol. 212] These findings were borne out by x-ray examination. An operation was performed on April 4, 1932, at which time a resection of the head of the first metatarsal of the right great toe was done. A general physical examination revealed a moderately severe astigmatism and a moderately severe dental caries. The patient's physical condition was otherwise negative. Blood pressure was 105/70. Chest and heart were negative for any pathological lesions. The Wassermann was negative. Urinalysis was negative for albumin, sugar, casts and pus. Following the operation for the hallux valgus the patient recovered without complications and was bearing weight on the right foot at the end of three weeks.

The patient was discharged on May 23, 1932 as in no need for further hospitalization, and he stated at this time that his condition was somewhat improved.

Respectfully, Wm. Y. Hollingsworth, Surgeon, USPHS, Medical Officer in Charge."

JDL:EA.

Dated May 28th, 1936.

The Court: I misapprehended the nature of the communication. I revoke the ruling I made, and now sustain the objection, and give the Respondent an exception. I don't think it is evidentiary for that purpose.

Mr. Bull: If your Honor please, it is just the same thing as the abstracts, which you allowed him.

[fol. 213] The Court: It is nothing more than a doctor's statement of the facts.

Mr. Bull: That is what the abstracts were.

Mr. Freedman: They were all certified.

(Exception noted for the Respondent.)

Q. Did you see that letter before, Mr. Taylor?

A. No, I did not.

Q. You stated that you obtained some medicine at the Philadelphia Public Health Service the latter part of February or early in March, 1935, didn't you?

A. Yes, sir.

Q. Did you obtain an abstract from there?

A. I didn't.

Q. Did Mr. Freedman?

A. I think he has.

Mr. Bull: Will you produce it, Mr. Freedman?

Mr. Freedman: I have here an abstract from the Marine Hospital, United States Public Health Service, it's a certified copy, and if Mr. Bull wants to agree with me I will offer it in evidence before Mr. Bull sees it.

Mr. Bull: This has been withheld here, and I think we have a perfect right to see it.

The Court: If I understand the answer, you called for it, and he is perfectly willing to put it in evidence himself, so he produces it, go ahead.

[fol. 214] Mr. Wolff: We are entitled to see it first.

Mr. Freedman: He asked me to produce it, and I do produce it.

Mr. Bull: Now I ask for it.

The Court: Certainly you do not produce it until you produce it.

Mr. Freedman: I am willing to put it in evidence.

The Court: When your turn comes, you may offer it in evidence.

Mr. Bull: I will offer this in evidence, but before I do that, may I have this other letter marked for identification?

(Previous marking of R-2 cancelled, and exhibit now marked R-2 for identification.)

Mr. Bull: This I offer as Respondent's Exhibit R-3, an abstract from the clinical record of the Public Health Service, Relief Station, 225 Chestnut Street, Philadelphia, dated March 19th, 1936.

(Received and marked Exhibit R-3.)

Mr. Bull: If your Honor please, this abstract is dated March 19th, 1936, and shows the following:

"Name: Charles W. Taylor.

Occupation: Merchant Seaman.

Age: 42 years.

Last vessel: S/S "Losmar".

Furnished outpatient care from Feb. 28, 1935 to Feb. 28, 1935.

[fol. 215] Diagnosis: furuncles, two, present on left forearm and neck; epidermophytosis, toes of both feet.

Condition of Patent Upon Admission

Furuncles, two, present on Left forearm and neck.

Epidermophytosis, toes of both feet.

Urinalysis 2-28-35 reports: Negative.
Blood Wasserman 3-4-1935 reports: Negative.

Condition of Patient on 2-28-35: Same"

There are a lot of other things on there, something addressed to Mr. Freedman's firm.

Mr. Freedman: I think that should go in.

Mr. Bull: Read it, then.

Mr. Freedman: You read it.

Mr. Bull: "P. S.—In reply to letter from Freedman, Goldstein & Pechner, Phila., Pa., dated 3-18-36, the only laboratory work done on this case—patient only here once—was the Wasserman Test and the Test of the Urine. Both of these were Negative." There is the impression of a service seal here, and signed by N. McG. Robertson, Medical Director, Surgeon, U. S. P. H. S. in Charge, and then at the bottom it says "To Mr. Charles W. Taylor, care of 1501 Franklin Trust Building, Philadelphia, Pennsylvania."

Q. Have you been in any other hospitals?

A. Yes.

Q. Where?

[fol. 216] A. I was in the Detroit Marine Hospital, in the Gorgas Hospital in the Panama Canal, in Ellis Island Marine Hospital, New York City, and in the Stapleton Marine Hospital, Stapleton, Staten Island.

Q. I meant besides those we have discussed here, any other hospitals?

A. No, sir.

Q. Did you ever have your feet frozen?

A. Never.

Mr. Bull: That's all.

(At this point Mr. Bull called Mr. Freedman to the stand, but after colloquy between counsel and the Court, Mr. Freedman did not take the stand.)

Mr. Freedman: I withdraw my objection to the letter R-2 for identification.

Mr. Bull: I assume there are no strings attached to that, you just withdraw your objection?

Mr. Freedman: That's right.
The Court: Note that the objection to the letter before ruled upon having been withdrawn, the letter is now admitted in evidence.

(Received and marked Exhibit R-2.)

Mr. Freedman: I should like to ask for the purpose of the record when this matter is going to be concluded, and just what witnesses they expect to take, what remaining witnesses they expect to take.
[fol. 217] The Court: Do you want to answer that question?
Mr. Wolff: If we had had this record here this morning before these doctors testified, it would be quite different than what it is now. What it is now we are not prepared to say.
The Court: When you offer anything else than what you have indicated, we will rule on it. If you should, and I assume you will not, but if you should I will then rule on it.

(At this point further hearing of this cause was continued.)

[fol. 218] Depositions taken on behalf of the Respondent, at the offices of Lewis, Wolff and Gourlay, Esqs., 208 South Fourth Street, Philadelphia, Pa., on Tuesday, July 7, 1936, at 11:00 o'clock A. M., Daylight Saving Time.

Present:

Freedman, Goldstein and Pechner, Esqs., by Abraham E. Freedman, Esq., and Paul M. Goldstein, Esq., for the Libellant.
Lewis, Wolff and Gourlay, Esqs., by Otto Wolff, Jr., Esq., and F. A. Bull, Esq., for the Respondent.
Everett G. Rodebaugh, Notary Public.

It is agreed by and between counsel for the respective parties that these depositions may be taken stenographically and thereafter reduced to typewriting, and that the signing, sealing, certification and filing thereof may be waived.

Mr. Bull: The depositions are taken pursuant to notice served on the proctors for the libellant.

John W. Jimmyer, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. Captain Jimmyer, how long have you been going to sea?

A. About thirty-five years.

Q. How long have you held a master's license?

A. Something over twenty-five years.

[fol. 219] Q. How long have you been on the "Losmar"?

A. Five years coming October.

Q. As captain?

A. Yes, sir.

Q. Still on there?

A. Yes.

Q. And were you on the "Losmar" in February and March, 1935?

A. Yes, sir.

Q. Do you remember the libellant, Charles Taylor?

A. I do.

Q. He was in the engine room department, was he?

A. Yes.

Q. Where was the "Losmar" in the early part of February?

A. In 1935?

Q. 1935.

A. Sparrows Point, Maryland.

Q. Do you remember how long she was there?

A. Pretty much the whole month of February.

Q. And what was she doing there?

A. Out of commission, as we call it.

Q. Do you recall any accident or injury to the libellant, Taylor?

A. No, sir.

Q. Did Taylor ever report to you that he had any accident or injury while the "Losmar" was at Sparrows Point?

A. Absolutely no.

Q. When was the first that he ever did inform you that he had any trouble with his foot?

[fol. 220] Mr. Freedman: That is objected to. I ask counsel not to lead the witness. Let him state what he knows about the case.

By Mr. Bull:

Q. Will you answer the question, Captain?

A. On the passage between Philadelphia and Colon in early March.

Q. Do you recall when you left Philadelphia?

A. No, that has been sixteen months ago, I can't recall, but I know it was in early March. I don't know just what day.

Q. See if this may refresh your recollection.

(A log book was shown to the witness.)

Mr. Freedman: May I ask what that is?

Mr. Bull: Yes, ask the Captain.

The Witness: Deck log of the steamer "Losmar".

Mr. Freedman: You don't mind if I look at it, do you?

Mr. Bull: No, no.

(Mr. Freedman examined the log book.)

Mr. Bull: Look at it afterwards.

Mr. Freedman: All right.

Mr. Bull: There is nothing in there that you want now. I am just asking him when the vessel was at Sparrows Point.

The Witness: What was the question?

By Mr. Bull:

Q. When was the vessel at Sparrows Point in February, 1935? When did she arrive there and when did she leave there?

[fol. 221] A. She arrived there on February 3rd and left on February 24th.

Q. And she proceeded from there—where did she proceed to from there?

A. To Philadelphia.

Q. And when did she arrive in Philadelphia?

A. She arrived in Philadelphia on February 26th.

Q. And when did she leave there?

A. She sailed from there, sailed from Philadelphia on March 3rd.

Q. And when did she arrive at the Canal?

A. She arrived alongside of the dock in Cristobal 9:13 P. M. of March 11th.

Q. And when did she arrive at Pedro Miguel lock?

A. My log shows she entered Pedro Miguel lock at 12:17

P. M. of March 12th, and at 12:30 P. M. fireman Taylor paid off and sent to the hospital.

Q. Now, do you have any records showing when Taylor reported to you that he had any trouble with his foot?

A. Yes, sir.

Q. When did he first report to you?

A. I would like to consult that record.

Q. Yes.

Mr. Freedman: Before you consult that, Captain, do you mind if I ask him a preliminary question? I wanted to know when it was made and by whom it was made.

Mr. Bull: Oh, yes, yes, go ahead.

By Mr. Freedman:

Q. When was that record made, Captain? Is it in typewritten form?

[fol. 222] A. Well, wouldn't it be better to ascertain what this thing really is, before it was made?

Q. Just——

A. Well, this is an abstract of the official log, and here is the first entry (indicating).

Mr. Freedman: Well, I object to the witness refreshing his memory from that document, since it is not in his own handwriting and there is no evidence that shows it is competent.

By Mr. Bull:

Q. Captain, who makes up the official log?

A. Myself.

Q. And are you refreshing your recollection from an abstract from the official log?

A. Yes, sir.

Q. Is the abstract also made up by you?

A. Yes, sir.

Mr. Freedman: I object to the abstract at this time.

Mr. Bull: We are not offering the abstract.

Mr. Freedman: I object to the witness refreshing his recollection from the abstract, and I move that he refresh his recollection from the original log itself, rather than from an abstract made.

Mr. Bull: All right.

By Mr. Bull:

Q. Captain, can you refresh your recollection from that paper and state when Taylor first reported to you any trouble of any kind with his foot?

[fol. 223] A. Yes, sir.

Q. When?

A. March 9th, 8 P. M.

Q. And what did he report then?

A. He complained of infection between the fourth and last toe of his right foot, seems to be a festering of some kind; infection cleaned and friars' balsam and moist gauze applied, advised to keep the foot clean.

Q. Did you see the foot then?

A. Yes, sir.

Mr. Freedman: I move that that last be stricken from the record as being read from the paper.

By Mr. Bull:

Q. And what did you see?

A. I saw a small crack between the fourth and the last, or small, toe of his right foot.

Q. And did he tell you anything about it then, when it had started or anything?

A. Not on that day.

Q. Did you give him any treatment for it on that day?

A. Yes, sir, it was cleaned, and friars' balsam and moist gauze applied.

Q. Now, did you see him again, see his foot again after that?

A. Yes, sir.

Q. When?

A. The following day, March 10th, at noon.

Q. And did you see the same thing then——

A. Yes, sir.

Q. —that you saw the day before?

[fol. 224] A. Infection seemed no better.

Q. Did you ask him anything about it, how long he had had it, or anything?

A. Well, it was either that day or the following one that I quizzed him rather closely, and he told me that he had been treating himself for about six weeks.

Q. Treating himself?

A. Yes, either prior to or when the ship arrived at Sparrows Point, Maryland.

Q. And did you ask him why he had not reported it to you?

A. I can't recall whether I did or not.

Q. Did you treat his foot on this second day, that is, March 10th?

A. Yes, sir.

Q. And did you see it again subsequent to that?

A. March the 11th.

Q. And what was the appearance then, any different?

A. Well, it seemed that it was spreading a bit.

Q. And what did you do after that? Did you treat it at that time?

A. Then it was cleaned with peroxide and moist gauze applied.

Q. Now, tell us what was done after that third treatment.

A. The vessel arrived at Cristobal alongside of the dock at 9:13 P. M. of March 11th.

Q. That is, Colon?

A. Colon, yes, sir, and some time afterwards I came down out of my room and Taylor was sitting on number 3 hatch, and I talked to him about his foot, I told him if I could get a hold of the agent we would see what we could do for him [fol. 225] that night. It was then, I judge, some time after ten P. M. Then Taylor—I asked him if he thought he could go until the following morning—Taylor said that he thought he could, it would be all right. I left the ship, it was at least 10:30, and I don't think I was gone over about forty-five minutes when I returned, and Taylor was nowhere in sight.

Q. And then when did the ship leave there?

A. The next morning, the vessel left the next morning at six A. M.

Q. And did you go through any other locks before Taylor was taken off?

A. We went through Gatun locks.

Q. And then the next one was——

A. Pedro Miguel.

Q. The one you call Pedro Miguel?

A. Yes.

Q. And there did you have a doctor come aboard?

A. Yes, sir, a Public Health Canal Zone doctor.

Q. What time did you get there?

A. We arrived at the locks 12:03 P. M.

Q. And what time was Taylor taken off?

A. 12:30.

Q. And did the doctor come on and look at his foot before he was taken off?

A. Yes, sir.

Q. Did you see his foot at that time?

A. Yes, sir, during the doctor's examination I was right alongside of him.

[fol. 226] Q. Now, was there any doctor on the ship at the Canal before this doctor came aboard?

A. No, sir.

Q. While you were at Colon were you at the pier?

A. Yes, sir.

Q. Anybody come out to the ship in a launch?

A. No, sir.

Q. It was testified here by one witness, a utility man, that a doctor came out to the ship on a launch and was with you for a while at Colon. Is that true?

A. No, sir.

Q. Before the 9th of March had you ever heard either from Taylor or through any other source of anything wrong with his foot?

A. No, sir.

Q. When a man has an injury or sickness on board a ship is it reported to—on board the "Losmar"——

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. —is it reported to you as the captain?

A. Yes, sir.

Q. Did you ever receive any reports before you received that one from Taylor on the 9th of March?

Mr. Freedman: That is objected to.

A. Positively no.

By Mr. Bull:

Q. Did Taylor at any time after he did report to you tell you that he had had any accident of any kind on the ship?

A. No, sir.

[fol. 227] Q. Did you know before then that Taylor had been to the Marine Hospital at Baltimore?
A. No, sir.
Q. Did you know that he had been to the Public Health Service at Philadelphia?
A. Positively no.
Q. Did he tell you about that after he did report?
A. No, sir.
Q. Did Taylor ever report to you at any time that he had had any accident of any kind on the "Losmar"?

Mr. Freedman: That is objected to.

A. No, sir.

By Mr. Bull:

Q. Did you ever hear through anybody else that he had had an accident on the "Losmar"?

Mr. Freedman: That is objected to.

A. No, sir.

By Mr. Bull:

Q. At the time you saw his foot on March 9th, 10th and 11th did you see anything other than this crack or festering which you spoke of between the two toes?

Mr. Freedman: That is objected to, and I ask counsel not to lead the witness. Let him testify to what he saw.

A. No, I did not.

Mr. Bull: That is all.

Cross-examination.

By Mr. Freedman:

Q. When you got into Cristobal, Captain, the foot looked pretty bad to you, Captain?
[fol. 228] A. What do you mean, pretty bad?
Q. There was a pretty bad infection on that foot, wasn't there?
A. I would say it was an infected foot.
Q. Didn't it seem to you as though it needed medical treatment?

A. It seemed to me to be a case of Dobie itch.

Q. I didn't ask you that, Captain, I just asked you whether you thought it needed medical treatment. Now, please answer the question.

A. Not immediate medical treatment.

Q. When you came back from Cristobal did you bring a doctor with you?

A. No, I did not.

Q. Now, when you first go through the locks after you pass Colon, or before you pass Colon, in that neighborhood, isn't the vessel visited by a local doctor?

A. Do you mean a quarantine doctor?

Q. Well, any kind, either an immigration, or quarantine, or some doctor?

A. A quarantine doctor comes aboard immediately after entering the breakwater.

Q. Was there such a doctor on board the vessel at this time, on this trip?

(The witness consulted the log.)

A. Yes.

By Mr. Freedman:

Q. When was that, Captain?

A. My log book shows that pratique was granted at 8:40 [fol. 229] P. M.; evidently it must have been within fifteen minutes before.

Q. What date was that, Captain?

A. The night of March 11th.

Q. That was a day before he left the vessel?

A. Yes, sir.

Q. He didn't see Taylor, did he, Captain?

A. I don't recall whether he did or not.

Q. You don't have it in your log book, do you, that he treated Taylor or looked at Taylor?

A. No, I don't.

Mr. Freedman: That is all.

Redirect examination.

By Mr. Bull:

Q. Captain, do you keep a record, make a record and keep it, of all reports of injuries or illnesses on the ship?

A. I do, sir.

Mr. Freedman: I object to that as improper redirect examination.

By Mr. Bull:

Q. And do you have any other records than those which you have testified about for March 9th, 10th and 11th on Taylor?

A. None other than this accident and illness report, which is a company form, and an extract of the log of his whole case.

Q. And that starts on March 9th?

A. Yes, sir.

Mr. Bull: That is all.

Recross-examination.

[fol. 230] By Mr. Freedman:

Q. That contains only information of your own knowledge, is that a fact, Captain?

A. That question again, please?

Q. Whatever is contained in that log or from that abstract, in that abstract, is all within your own knowledge, is that right, and you put it in the book yourself?

A. It is a condensed form of the action that I had taken in any case.

Q. And it contains only that within your own knowledge, is that right?

A. Within my own knowledge—I wouldn't say knowledge, because it is just simply a condensed report of the action that I took.

Q. Well, if you didn't know about it it couldn't be in there, is that right?

A. No, it couldn't be in there.

Q. In other words, only that which is within your knowledge is contained in that report?

A. That is all I would put in there.

Mr. Freedman: That is all.

Joseph R. Guy, Having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. Mr. Guy, how long have you been going to sea?

A. Oh, about twenty-two years.

[fol. 231] Q. And what license do you hold?

A. Chief engineer.

Q. And are you on the "Losmar"?

A. Yes, sir.

Q. In what capacity?

A. First assistant.

Q. Were you on the "Losmar" in February and March, 1935?

A. Yes.

Q. In what capacity then?

A. First assistant.

Q. Do you remember Taylor?

A. Yes.

Q. Charles Taylor?

A. Yes.

Q. Do you remember where the "Losmar" was in February, that is, from February 4th to 24th, 1935?

A. Sparrows Point, Maryland.

Q. Was Taylor under you?

A. Yes.

Q. In your watch?

A. Yes.

Q. What other engineers were there on the "Losmar" at that time; well, now, let me say on February 9th.

A. Myself and Whitmore.

Q. And what was he?

A. He was the third assistant.

Q. Was there any second on board then?

A. No.

[fol. 232] Q. Well, then, there was the chief, wasn't there?

A. The chief had left the ship, he wasn't on board at the time.

Q. He wasn't on board?

A. No.

Q. He was chief engineer on the ship?

A. He was chief engineer, yes.

Q. But was there any second assistant assigned to the ship on the 9th of February?

A. Yes, there was.

Q. Where was he?

A. Well, he had—he hadn't reported for duty but he was assigned to the ship, and he didn't report until Monday.

Q. Monday, that is the next Monday, the 11th?

A. Right.

Q. Did Taylor ever report to you while the vessel was at Sparrows Point any accident or injury or trouble with his foot?

A. No, sir.

Q. You say he was on your watch?

A. Yes.

Q. Did Taylor ever report to you that he had been to the Marine Hospital at Baltimore while you were there?

A. No, sir.

Q. Did he ever report to you after you left Baltimore and on the way to Philadelphia, or while you were at Philadelphia?

A. No, sir.

Q. When did you first learn that Taylor had anything wrong with his foot?

[fol. 233] A. Well, I, several days out of Philadelphia I noticed that he had one of his shoes, the top cut out of it, and that is about all I can say until we got to the Canal, just before we got into the Canal he was complaining about his foot.

Q. Did he tell you anything about his foot?

A. No, sir.

Q. When you say several days after you left Philadelphia, do you mean on the voyage down to the Canal and around to the west coast?

A. Yes.

Mr. Freedman: Just a moment, I don't quite understand your question, you mean on the West coast, several days after he go on the West Coast, or several days after he left Philadelphia on the East Coast?

Mr. Bull: After he left Philadelphia, on the East Coast, on the voyage to the West Coast.

Mr. Freedman: Just so we get it straight.

Mr. Bull: He could only leave Philadelphia on the East Coast.

Mr. Freedman: No, I thought you meant several days after he left the Canal.

By Mr. Bull:

Q. Was this before the vessel arrived at the Canal?

A. Yes.

Q. Did Taylor tell you anything about it then?

A. He never mentioned it to me at all.

Q. Did he continue to work on his watches?

A. Yes, he never lost any time.

[fol. 234] Q. Did he complain any?

A. Never heard him mention it.

Q. Did he ask to be relieved of any work?

A. No, sir.

Q. Did you see his foot at any time?

A. No, sir.

Q. Did you know when he was taken off the ship at the Canal?

A. Yes, I did.

Q. Under what circumstances did you know about that?

A. Why, the skipper sent me back aft to get him and get his things together so we could have him sent ashore.

Q. Did you see him taken ashore?

A. Yes, he walked ashore himself.

Q. Did you see him after he got ashore, where he went?

A. No, I didn't, but—well, he had to walk either up or down the locks, and I didn't pay any attention to that.

Q. Did he ever tell you that he had been to the Marine Hospital at Baltimore?

A. No, sir.

Q. Did he ever tell you that he had received out-patient treatment at the Public Health Service in Philadelphia?

A. No, sir.

Q. Did you know that there was anything wrong with his foot before you reached the Canal?

A. Well, not—nothing serious, I only noticed he had a broken shoe, the shoe was torn.

Q. When you say cut shoe do you mean, can you tell us how you mean it was cut?

A. Well, the—what do you call it—the side was taken [fol. 235] out, just like that (indicating).

Q. You mean it had been cut by him or somebody——

A. It had been cut out, yes, sir.

Q. —to loosen it up for his toes or his feet?

A. Yes.

Q. Is that what you mean?

A. Yes.

Q. In other words, a big piece on the top in front of his shoe, is that it?

A. Well, it had been cut on the side, like, just like a quarter of a circle.

Q. Cut to relieve his foot, is that what you mean?

A. Yes.

Q. When you say quarter of a circle, do you mean a quarter of a circle had been cut out of the shoe?

A. Yes.

Mr. Freedman: I wish to indicate at this point that the witness pointed to the portion over his small toe of the foot.

By Mr. Bull:

Q. Are you familiar with the retarders on the boilers on the "Losmar"?

A. Yes, sir.

Q. And what are those retarders?

A. Well, they are a galvanized strip of metal, sort of a spiral, and they are placed in the tubes to retard the heat and the gas, to get more efficiency from your fire and your fuel.

[fol. 236] Q. How would you describe them with respect to their rigidity or flexibility?

A. Oh, they are—well, they are very—very flexible, the heat softens them, and they are easily bent.

Q. How long are they?

A. Oh, I should say six feet.

Q. Are they thick or thin?

A. Well, I imagine they are about an eighth.

Q. Eighth of an inch?

A. Yes, sir.

Q. This six feet that you speak of, you say about that, do you mean that is your estimate?

A. Yes.

Q. And is that in its spiral condition?

A. Yes.

Q. Are those taken out very often?

A. Yes, sir.

Q. Are they hot or cold when they are taken out, as a rule?

A. Usually cold.

Q. Now, can you tell us when the retarders were removed from the center boiler while you were at Sparrows Point?

A. Yes, sir.

Q. When were they?

A. Well, the work began on the center boiler Monday morning.

Q. What date?

A. On the 11th.

Q. Of February?

[fol. 237] A. February 11th.

Q. When those retarders are taken out from the boiler what is done with them?

A. They are dropped right in front of the boiler, straight down in front of the smoke box, where they come out.

Q. Are they dropped in front of the boiler from which they are taken, or placed in front of some other boiler?

Mr. Freedman: That is objected to. I object on the ground that he should confine himself to what happened in this case and not what generally may be done.

By Mr. Bull:

Q. Will you answer the question? Do you understand the question?

A. Yes. The retarders in all cases are dropped in front of the boiler in their respective place in front of the smoke box as they come out.

Q. Was that done in this particular instance?

A. Yes, sir.

Q. Were any of the retarders from any of the other boilers placed in front of the center boiler?

A. No, sir.

Q. I show you what has been marked in evidence as Respondent's Exhibit 2, which is a rough diagram which Mr. Taylor made of the engine room and boiler room, showing the passageway from the engine room into the boiler room, and showing the three boilers. Is that substantially correct as a rough drawing?

(The witness examined the drawing.)

[fol. 238] A. Yes, it is.

By Mr. Bull:

Q. And you will note that there are three X's there.

A. Yes.

Q. Are those the fronts of the three boilers?

A. Yes, sir.

Q. Will you note the place between two of those boilers which has a P in it? Is that the passageway from the engine room into the boiler——

A. Yes.

Q. Into the boiler room. And the two boilers between which that passageway runs are which ones?

A. The center and the starboard.

Q. Now, I notice that in front of one of them is a jagged line with R on it. Do you see that?

A. Yes, I do.

Q. Which boiler is that in front of?

A. Center boiler.

Q. Now, you will see the letter Y there. Is that where you step into the boiler room from that passageway?

A. Yes.

Q. Is that a level floor there from the passageway right into here, or are there steps?

A. No, there are steps.

Q. Going up or down?

A. Going up into the fire room.

Q. Going up from the passageway into the fire room?

A. Yes, sir.

[fol. 239] Q. And are those steps right at the front, very front of the boilers.

A. Yes, they are.

Q. That is, the top of the steps is——

A. Even with the front of the boiler.

Q. Now, when the "Losmar" was there at Sparrows Point on February 9th she had been there for a few days, had she?

A. Yes, sir.

Q. And can you state whether or not the retarders when they were taken out of that center boiler were hot or cold?

A. They were cold.

Q. Where is the proper place to put and leave those retarders while they are out of the boiler?

A. In front of the boiler.

Q. Is that the customary and usual place for them?

A. Yes, sir.

Q. Do you ever put them over toward the bulkhead?

A. No.

Q. How much space is there between the front of the boiler and the bulkhead?

A. Approximately nine feet.

Q. Now, on the front of those boilers, the face, do they run right straight up and down vertically, or is there any slant?

A. Oh, it is almost a forty-five degree slant from the bottom of the boilers to the—slanting toward the bulkhead.

Q. So that they slant up and out, is that it?

A. Yes, sir.

[fol. 240] Q. And these retarders when they are at the front of the boiler are under this slanting part, are they?

A. Almost parallel——

Q. Almost parallel?

A. —with the top of the smoke box doors.

Q. In other words, a plumb bob dropped down from up at the top would be at the outside or around the outside of the retarders?

A. It is approximately two and a half feet out.

Q. That is, the top is?

A. Yes.

Q. Now, in front of the boilers are there also valves and different kinds of gadgets?

A. Yes, sir.

Q. Extending out from the front of the boilers?

A. Yes.

Q. Now, over toward the bulkhead, directly opposite the front of the center boiler, are there any pipes or valves or anything?

A. Yes, there is.

Q. What pipe is there?

A. There is the filling line to the number 3 tanks, high and low suction for the starboard and port settlers.

Q. That is, directly opposite there, there would be valves for the settlers?

A. Yes, sir.

Mr. Freedman: I ask counsel, now, I haven't been interfering, but you have been leading him continually from [fol. 241] the beginning to this point, I ask counsel to refrain from leading the witness, and let him tell the story just as he knows it. Ask him to describe it himself.

Mr. Bull: I think he is.

Mr. Freedman: I know, but you are describing it for him and asking him whether that is not so.

By Mr. Bull:

Q. If these retarders were placed over against the bulkhead would they interfere with any of the work of the ship?

A. Yes, sir, if they were placed against the bulkhead you wouldn't be able to operate your valves for your settlers, and you would also be in the road of your changing your settlers over, when a tank went dry, and also when you went to pump it up again, you would have to move them all around to get at those particular valves to fill your tanks.

Q. Now, when you enter the boiler room from this passageway between the starboard and the center boilers do you turn, if you want to go to the left, turn immediately that you get in, or is the passageway higher and better out a little bit?

Mr. Freedman: I object to that for the same reason I stated before.

Mr. Bull: Well, I will withdraw that, and ask you——

By Mr. Bull:

Q. Mr. Guy, in going from the passageway between the starboard and center boilers into the boiler room if you want to turn to the center or port boiler where would you make that turn?

[fol. 242] A. Well, in order to make a complete turn without hitting the boiler or anything you would have to take possibly two and a half steps straight ahead before you could turn with any safety.

Q. And that is because of what?

A. Well, you would—you would be practically in the middle of the fire room after taking two steps headed towards either side of the ship.

Q. And why do you say you would do that?

A. Well, you wouldn't hit against the corner of the air ducts or the sides of the—front of the boiler.

Q. How many generators were there on the "Losmar" at that time?

A. Two.

Q. And where are they located?

A. At the very top of the engine room, right aft of the low pressure cylinder, on a special platform.

Q. Do you know what their condition was at that time?

A. They were O. K.

Q. Did you have any trouble with them?

A. No, sir.

Q. There was some testimony that around four o'clock on Saturday, February 9th they changed from steam to air, causing a blinking of the lights, and causing the lights to go out. Do you know whether or not on Saturdays they did make any change from steam to air.

Mr. Freedman: That is objected to.

A. There was no changes made from steam to air on any Saturdays.

[fol. 243] By Mr. Bull:

Q. Was there on Saturday, the 9th of February?

A. No, sir.

Q. Was four to eight watch your watch?

A. Yes.

Q. You were in charge of that watch?

A. At sea, yes; but in port, why everyone is working day work, and one engineer stays aboard at nights. Everybody is around the ship during the eight hours during the day.

Q. Do you know of any change in the generators on that afternoon?

A. No, sir.

Q. Do you know of the lights going out at any time on that afternoon?

A. No, sir.

Q. Was any report made to you by anyone in regard to that?

A. No.

Q. Were you on the ship all that afternoon?

A. Yes, sir.

Mr. Freedman: What afternoon?

By Mr. Bull:

Q. February 9th, 1935?

A. Yes, sir.

Q. And did the lights go out?

A. No, sir.

Mr. Bull: That is all.

Cross-examination.

By Mr. Freedman:

[fol. 244] Q. You are still working on the "Losmar"?

A. Yes.

Q. I understand you testified before that those retarders are very thin, spiral strips of steel, is that correct?

A. Yes, either steel or cast——

Q. Metal?

A. Metal.

Q. They are metal. They are pretty sharp on the ends, aren't they?

A. Oh, they are about an eighth thick, and—that is an eighth of an inch—and probably two—two and a quarter inches wide, but on the corners they would be sharp.

Q. You mean to say they would be pretty sharp on each end because they are so thin?

A. Just metal, like, cut this off (indicating by reference to the desk), just the end of the metal, the same thickness as the metal.

Q. Leaving a sharp edge?

A. Well, it would be an eighth.

Q. Eighth of an inch thick?

A. Eighth of an inch thick.

Q. Now, when you pile these retarders, or when you take them out of the tubes you put them all down in a pile, don't you?

A. Yes.

Q. Just throw them down in a heap?

A. Yes.

Q. About how many would you say you can put in a heap?

A. Well, I should imagine between one hundred and seventy-five and two hundred.

[fol. 245] Q. Pretty good size of them there, in other words?

A. Yes, sir, a pile around two feet high, I imagine.

Q. Now, you only take them out when you are working in port, isn't that a fact?

A. That is right.

Q. You don't take them out while you are at sea?

A. No.

Q. Now, when you state that the work began on these various boilers are you depending on your memory?

A. Not—I have a record of all the work that is being done in the engine room and the fire room, and each day after the work is complete I write my work book up.

Q. Now, this passageway that leads from the engine room down into the boiler room, you stated before that there are steps which lead up into the boiler room from the passageway.

A. Yes, that is right.

Q. Now, how many steps are there?

A. Two.

Q. About how high are they?

A. Oh, I should say sixteen inches, maybe.

Q. Sixteen inches?

A. Yes.

Q. You mean the both of them?

A. Yes, two short steps.

Q. Each step would be about eight inches?

A. I imagine.

Q. You could step up on the second step without any trouble, couldn't you?

A. Oh, yes.

[fol. 246] Q. Now, you stated before that there are some valves back of the center boiler or up against the bulkhead?

A. Yes.

Q. Now, these valves, are those valves just in front of the center boiler, or do they extend all over through the entire length of the boiler room and the other boilers, too?

A. Well, the particular ones we use are directly opposite the center boiler.

Q. That is just opposite the center boiler?

A. Yes.

Q. So if you wanted to, if you wanted to move your retarders over to the bulkhead you could have moved them a little bit aside of the center boiler and piled them up against the bulkhead, and they wouldn't have been in the way, isn't that a fact?

A. Across there, there are sand barrels and pipes and vise benches and manifolds.

Q. Any valves?

A. Oh, yes.

Q. I mean, things that you have to get to?

A. Well, not particularly, no.

Q. So that you could have put, for the time being, to get them out of the way, you could have put them up against the bulkhead, although not exactly in front of the boiler, without interfering with your work?

A. Well, but that would have been an extra amount of work, it would have been just to double the amount of work.

Q. You say this roof in the boiler room slanted almost forty-five degrees?

[fol. 247] A. No, it isn't the roof, it is the boiler itself, the doors come out like that (indicating), the boiler has a tendency to slope like that, it comes like this a little ways and then goes straight up (indicating).

Q. But you could have put those retarders over by the bulkhead without interfering with your work, that is a fact, though, isn't it?

A. No, it wouldn't—it would have interfered with the work to a certain extent.

Q. Well, I don't mean in front of the center boiler, I said aside of the center boiler, you could have put them aside.

A. Well, that would have been just extra work for nothing, you would have been just hauling them around the fire room for nothing.

Q. When did you first join the "Losmar", Mr. Guy, just approximately?

A. 1928.

Q. 1928?

A. She wasn't the "Losmar" then. It was '31, I guess.

Q. What did you join her as?

A. Second assistant.

Q. Second assistant, and how long did you remain second assistant?

A. Until February 5th, 1935.

Q. February 5th, you mean a few days before this accident?

A. Yes.

Q. Was your place taken immediately?

[fol. 248] A. Pardon?

Q. I say, was your place taken immediately?

A. Well, yes the man that took my place was assigned on the—on Friday, I guess, and he come to work Monday morning.

Q. He came to work Monday morning?

A. Yes.

Q. You mean on the 11th?

A. Yes.

Q. Now, as I understand you, as I understand your testimony, you stated before that you got Taylor's effects just before they took him off the vessel in the Canal, is that right?

A. Yes, I went back to his quarters and told him to bring his things along.

Q. Did you see his foot then?

A. No, sir, I never saw his foot at any time.

Q. Well, you stated before that his shoe was cut.

A. Yes, but he had his stockings on. As far as looking at the actual flesh, I never saw it..

Q. But he was on your watch?

A. Yes.

Q. I mean, he was under your supervision?

A. Yes, all the time.

Q. And you say his shoe was cut?

A. His shoe was cut on the side.

Q. Yes, and you didn't know what was wrong?

A. No, I had no idea, I never asked the man a thing about his personal affairs or what was wrong with him. [fol. 249] He never made no complaint and I never talked to him.

Q. Well, who was it who assisted Taylor ashore?

A. Some of the Canal authorities, I imagine. See, they have a——

Q. You mean they came on board the ship and helped him go ashore?

A. No, he walked down, they have an enormous gangway with wheels in the center of it, kind of handles, like, two men just take the handle like this and swing it right up over the ship's side, and you just walk right down.

Q. You mean you could assist yourself down that way?

A. Oh, yes, it is perfectly——

Q. Well, wasn't there somebody who was going down the gangplank with him?

A. Not to my knowledge.

Q. You mean you weren't there watching?

A. Well, I was watching, but I can't recall seeing anybody assist him.

Q. You mean you don't remember seeing him going down?

A. No, I can't say that, either.

Q. Now, about the time you were promoted you had received a compliment from some of the officials to the effect that you had saved fuel consumption or fuel on board the vessel, is that a fact?

A. No, sir.

Q. You didn't? Now, when did you change the generators from steam to air?

[fol. 250] A. They don't change from steam to air.

Q. Well, when you got into port didn't you use the electricity from the plant?

A. We used our own current.

Q. Well, now, while you were lying up there didn't you use the air compressor on shore?

A. Well, the air compressor is way up at the docks, don't even know where it is.

Q. Well, didn't you use any of the power from the plant, didn't you get a wire and have somebody assist you and hook up the generators with the power from the plant?

A. No.

Q. I mean, at any time, I am not——

A. Oh, we have, yes, but we have taken, most times in dry dock we always take direct power from the shore, have wires come right aboard ship.

Q. In other words, you mean you want to save the electricity, save the generators on the vessel and cut down any consumption of fuel on the vessel?

A. Well, it isn't necessarily that, but it saves everything, like when you are in dry dock, and all that sort of thing, you are running your auxiliary machinery in the air and wasting all the water, and it is usual procedure to get your lights from the shore.

Q. So as a good engineer you wanted to save the power and you wanted to connect up with the electricity or the power they have on shore?

A. Well, it is usually the custom, the chief engineer always speaks with the authorities on the dock and orders [fol. 251] the lights from the shore put on, in most dry docks. In this particular, in this particular case, why, we didn't do that because we were very busy, we were under inspection, under Lloyd's survey.

Q. How long had you been there?

A. In Baltimore?

Q. Yes.

A. Well, we stayed about twenty days, I imagine, twenty days, twenty-one days.

Q. And you didn't do it any time during those twenty days? You are under oath, now, and I want you to make sure of what you say.

A. I can't recall of ever doing it that particular trip.

Q. You don't remember, in other words, you don't know whether you did or whether you didn't, is that right?

A. That is right.

Q. Isn't it a fact that Taylor helped you connect it up——

A. No, sir.

Q. —on or about that time?

A. Taylor wouldn't have under any situation.

Q. He was on your watch, wasn't he?

A. Well, he was on a watch by himself, I mean to say, looking after all auxiliary machinery, firing the boilers, looking after that sort of thing, he had nothing to do with anything else, hooking up.

Q. But he was still subject to your supervision, wasn't he?

A. Well, the only thing, his orders were to keep the steam up, keep the auxiliaries all running, keep the auxiliary machinery going. That was his duty.

[fol. 252] Q. And if anything should turn up, why, he was immediately subject to your call, right?

A. If anything happened he was supposed to notify the engineer on watch.

Q. That was you?

A. Yes, at that particular—if it happened, you know, when I was on duty. If some other engineer was on duty, why——

Q. That is right, but on this occasion he was on your watch, though?

A. At sea, yes. In port nobody has a watch, all the engineers work day work, from eight in the morning until five in the afternoon, and one engineer stayed on board night times, in the evening, nights, and the rest went ashore, and this engineer that was on night duty was subject to call at any time. If anything went wrong, why, this fireman, anything went wrong with the machinery or anything like that, he would immediately notify the engineer on the watch.

Q. Then you mean to say you can't remember whether you changed the generators on that trip?

A. No, we didn't.

Q. Can't remember?

A. Can't remember changing.

Q. That is "yes" or "no", it is either you do or you don't.

A. I don't remember changing them at all.

Q. You mean you don't remember whether you did or not?

A. No, I don't remember.

Mr. Freedman: That is all.

[fol. 253] Redirect examination.

By Mr. Bull:

Q. Just one question, Mr. Guy, was there any air—any shore current furnished there on Saturdays and Sundays?

A. No, sir.

Mr. Freedman: That is objected to.

Mr. Bull: That is all.

Calvin G. Collins, Jr., having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. Mr. Collins, how long have you been going to sea?

A. Well, I will say approximately about six and a half, seven years,

Q. And how long have you been on the "Losmar"?

A. Since—well, I was assigned to the "Losmar" on February 9th, transferred off the steamship "Calmar".

Q. And when did you join the "Losmar"?

A. Well, I carried my clothes out Saturday afternoon, at night, the chief wasn't aboard, so I left my clothes and I went back, and I showed up for work Monday morning.

Q. That is on February 11th?

A. 11th, yes, sir.

Q. In what capacity were you on there?

A. Second assistant.

[fol. 254] Q. And what had you been on the "Calmar"?

A. Third assistant.

Q. And how long have you held an engineer's license?

A. Well, I will say about three and a half years.

Q. Do you remember the libellant, Charles W. Taylor?

A. Yes, sir.

Q. He was in the engineer's department, wasn't he, on the "Losmar"?

A. Yes, sir.

Q. Did Taylor ever tell you anything about any injury to his foot?

A. No, sir.

Q. Did you see him while he was at work, while the ship was at Sparrows Point?

A. Yes, sir.

Q. Did he continue with his work every day?

A. Yes, sir.

Q. Did you hear any complaints from him?

A. None whatsoever.

Q. And were you on the ship when she went from Baltimore, came up to Philadelphia, and then started an intercoastal voyage down by way of the Canal to the West Coast?

A. Yes, sir.

Q. Did you hear any complaints from Taylor on the voyage from Baltimore to Philadelphia?

A. No, sir.

Q. Or while at Philadelphia?

A. No, sir.

[fol. 255] Q. Did Taylor ever say anything to you about his going to the Marine Hospital at Baltimore?

A. No, sir.

Q. Did he ever say anything to you about going for outpatient treatment at Philadelphia?

A. No, sir.

Q. When was the first that you ever knew of anything wrong with Taylor's foot?

A. Several days before we got in the Canal he made a complaint about his foot, it was infected.

Q. You say several days; can you tell us about how many?

A. Well, I will say three or four days.

Q. And did he make that statement to you?

A. Yes, sir, I was talking to him in the fire room at the time.

Q. And what did he say about it?

A. Well, he was just telling me his foot was infected, he would see a doctor when he got to the Canal, that was all.

Q. Did he tell you whether or not he had had any accident of any kind?

A. Never mentioned anything about no accident or nothing.

Q. Did you ever hear, either from Taylor or any other source, of his having had any accident at all?

A. No.

Mr. Freedman: That is objected to.

The Witness: No, sir.

[fol. 256] By Mr. Bull:

Q. Did you see his foot at that time?

A. No, sir, I did not.

Q. Did you see his foot after that time, before he left the ship?

A. No, sir, I never did see it.

Q. Did he have a piece cut out of his shoe?

A. He had a piece cut out of his shoe several days before he got to the Canal, I would say, but I never paid no particular attention just when it was cut out, because he wasn't on my watch, see.

Q. Did you see at any time before he left the ship that there was a piece of it cut out?

A. Yes, sir.

Q. And was it a large piece or a small piece?

A. Well, I would say two or three inches.

Q. Did he ever discuss his foot in any way with you other than the time you speak of when he mentioned it in the fire room?

A. No, sir.

Q. Did he tell you at any time just what the trouble was with his foot?

Mr. Freedman: I object to that. The man has stated all he knows about it.

A. He never did tell me definite what he thought was wrong with it or nothing, but the only thing I could take for granted was——

Mr. Freedman: That is objected to. I object to any con-
[fol. 257] clusions that the witness might make.

By Mr. Bull:

Q. It isn't a question of what you might take for granted, Mr. Collins, it is anything that he told you.

A. No, sir, he didn't tell me.

Q. When he did mention it to you that one time what did he say?

A. Well, he was just telling about his foot being infected and that he was going to see the doctor when he got to the Canal.

Q. You weren't on the "Losmar" on February 9th, were you?

A. Well, just aboard to carry my clothes and then left right away.

Q. And at that time you were not down in the engine room or boiler room?

A. No, sir.

Q. You weren't there Sunday, were you?

A. No, sir.

Q. But you went to work there on Monday?

A. Yes, sir.

Q. Do you know when they started work on the center boiler?

A. On Monday morning.

Q. And, first, let me ask you, you say Monday morning, is that the 11th of February, you mean?

A. Yes, sir.

Q. Were the retarders taken out of the center boiler on that day?

A. Yes, sir, taken out on the Monday morning I started to work.

[fol. 258] Q. And where were they placed?

A. In the front of the boiler, right close up to the boiler.

Q. Were they in front of the passageway leading in from the engine room?

A. No, sir.

Q. About how far over from the passageway would they be?

A. Well, I would say about a couple of feet.

Q. That is, one end of them?

A. One end of them.

Q. Where is the usual and customary place to place those when they are removed from the boiler?

A. In the front of the boiler, right close up to it.

Q. Are they ever placed anywhere else?

A. Why, they haven't been since I was on that ship; not customary to do so.

Q. When they are placed as you say they were on this occasion do they interfere with anything?

A. No, sir, they don't.

Q. If they were placed at the bulkhead opposite the boiler would they interfere with anything?

Mr. Freedman: Objected to.

A. Yes, sir, they would.

By Mr. Bull:

Q. And what would they interfere with?

A. Well, they would interfere with the suction and discharge valves from the settling tanks, and also the suction or the filling line from the number 3 double bottom tanks.

[fol. 259] Q. About how wide is it from the bottom of the boiler over to the bulkhead?

A. I would say about nine feet, and that boiler, the face of the boiler, isn't vertical, see?

Q. It has a slant, does it?

A. It is vertical up for about three feet, I would say. Then it has a slant over, about a forty-five degree.

Q. And over at the bulkhead are there any large pipes?

A. Yes, sir, suction or filling line used for suction and filling line for the number 3 double bottom tanks.

Q. And about how large a pipe is that?

A. About eight inches, I would say.

Q. In diameter?

A. Yes, sir.

Q. And how high is that above the floor plates?

A. I would say it set up about fourteen, sixteen inches above the floor plates.

Q. That is, the top of the pipe, or the——

A. Yes, sir, the top of the pipe.

Q. And does it set out any from the side of the bulkhead?

A. About a foot out from the bulkhead.

Q. Now, does that pipe extend all the way along the boiler room?

A. No, sir, it starts from the port side of the center boiler, that is, in line with it, against the bulkhead, and

runs up to about the center of the starboard boiler, then leads down below the floor plates, a line to the pump.
[fol. 260] Q. Now, an ordinary man standing erect, how close could he walk to the front of the boilers?

Mr. Freedman: That is objected to.

A. Well, I would say standing straight, a foot and a half to two feet, anyway, he would have to go out from it, without hitting this here slope of the boiler.

By Mr. Bull:

Q. Are there also valves and pipes and other gadgets on the front of the boilers?

A. Yes, sir.

Q. They extend out from the front?

A. They extend out about a foot from the front of the boiler.

Q. Now, can you state whether the passageway left for walking along in front of the boilers would be wider if the retarders were placed over against the front of the boilers or over against the bulkhead?

Mr. Freedman: That is objected to.

A. Well, I would say it would be approximately the same space in there. The only thing, where the boiler comes out of the slope, you would have to sort of bend to go through, that would cut you out of that much space, standing out far enough from the boiler to stand straight.

By Mr. Bull:

Q. I show you what has been marked as Respondent's Exhibit 2, which was made as a rough sketch by Mr. Taylor of the boilers, showing the passageway from the engine [fol. 261] room into the boiler room, and ask you if that is a fair rough sketch of it.

(The witness examined the sketch.)

A. Yes, sir.

By Mr. Bull:

Q. And you will note the letter P. Is that the passageway leading from the engine room into the boiler room?

A. Yes, sir.

Q. And that goes between which two boilers?

A. Between the center boiler and the starboard boiler.

Q. And you will note a jagged line in front of one of those boilers, with the letter R on it. Which boiler is that?

A. Center boiler.

Q. And as you come through the passageway which is marked P and come to the front of these boilers do you have any steps to take——

A. Yes.

Q. —into the boiler room, or is it on a level?

A. Have steps to come up.

Q. And how many steps?

A. I would say two steps.

Q. You step up coming from the passageway into the boiler room, do you?

A. Yes, sir.

Q. And is that jagged line which is marked R, is that about where the retarders from the center boiler were placed when they were removed on February 11th?

Mr. Freedman: That is objected to.

[fol. 262] A. Well, is this line supposed to represent a bulkhead?

By Mr. Bull:

Q. Which line?

A. Is that supposed to represent a bulkhead?

Q. The line, I take it, right at the edge of the paper is meant for the bulkhead.

A. Well, I would say the retarders would be placed where the jagged lines are.

Q. And when you went on duty on that day those retarders were there or in the boiler?

A. They was in the boiler when I went on duty.

Q. Now, in your experience on there are the retarders ever taken out of one boiler and placed in front of a different boiler?

A. No, sir.

Q. While the retarders are out of one boiler that boiler is out of operation, commission, isn't it?

Mr. Freedman: That is objected to.

A. Yes, sir.

By Mr. Bull:

Q. Are they out of all the boilers at the same time?

A. No, sir, only take one boiler at a time, complete it, get it back, and then take another boiler.

Q. While you were on the "Losmar" do you know what the condition of the generators was?

[fol. 263] A. Well, since I have been on there it has been in good condition at all times.

Q. Ever have any trouble with them?

A. No, sir, never.

Mr. Freedman: Objected to.

By Mr. Bull:

Q. Do you know whether or not current at Sparrows Point is furnished from the shore on Saturdays or Sundays?

Mr. Freedman: That is objected to.

A. Why, it is if you make the arrangement to take it from shore, but generally when the ship goes on dry dock we have a large crew of shipyard workers using portable lights around, so we take current from shore while she is on dry dock, see?

By Mr. Bull:

Q. Is that true on Sundays?

Mr. Freedman: Do you mind if I put in an objection here?

Mr. Bull: Oh, no.

Mr. Freedman: I move that the answer be stricken as not competent. I ask counsel to confine himself to what actually did happen on these particular days, and not what they generally do.

By Mr. Bull:

Q. Is that true on Sundays?

A. Why, if the ships happen to be on dry dock on Sundays we would leave the line connected up to it.

Mr. Freedman: That question and answer is objected to.

[fol. 264] By Mr. Bull:

Q. You weren't there on the 9th, though?

A. No, sir, I wasn't.

Mr. Freedman: Excuse me, will you read that answer?

(The preceding answer was repeated by the reporter, as follows:

"A. Why, if the ships happen to be on dry dock on Sundays we would leave the line connected up to it").

By Mr. Freedman:

Q. To the shore, is that what you mean?
A. Yes, the shipyard gang would leave it connected up, they put it on and disconnect it when we are on dry dock.
Q. You mean on Sunday?
A. It is put on when the ship goes on dry dock.
Q. Oh, I see.
A. And it stays there until she comes off the dry dock.

Mr. Bull: That is all.

Cross-examination.

By Mr. Freedman:

Q. You say you were brought from the "Calmar", Mr. Collins, where you were third assistant, and promoted to second assistant on the "Losmar"?
[fol. 265] A. I was transferred off of there to the "Losmar", from third assistant to second assistant.
Q. In other words, you were promoted?
A. Yes, promoted.
Q. To what watch were you assigned on the "Losmar"?
A. Well, second assistants on all ships have a twelve to four watch, from twelve A. M. to four A. M. and——
Q. You weren't on Taylor's watch, were you?
A. No, sir.
Q. Now, have you worked on many other vessels in your experience?
A. Well, I would say five or six.
Q. As engineer?
A. No, only ones I have been on as engineer is the "Calmar" and the "Losmar" with this company.
Q. On what vessels did you serve previous to those?
A. Well, on the "Arlyn" with the Bull Line.
Q. And what was your rating on that vessel?
A. As oiler.
Q. Oiler?

A. Oiler and fireman.

Q. And will you mention some of the others and your ratings on those vessels?

A. Well, I was on the steamship "Norman Bridge", of the Pan American Oil Company.

Q. What were you on that vessel?

[fol. 266] A. As fireman, oiler and pumpman.

Q. Now, on these other vessels did you ever have occasion to remove the retarders?

A. Yes, sir.

Q. Were they built, were those vessels built the same, approximately the same as the "Losmar"?

A. Well, approximately, the boiler fronts are the same, but pipe lines are arranged different.

Q. Isn't it customary to put the retarders after you get through with them in the—after taking them out of the boilers, over against the bulkhead and out of the way, on these other vessels?

A. Why no; customary to drop them right in front of the boiler; because the way your boiler is shaped, coming up, when you open the door to take your retarders out, that gives you a view to stand up in there, see?

Q. They are pretty hot when you pull them out, aren't they?

A. Why, not necessarily, only takes a couple days for them to cool down; depends on how long the boiler has been dead.

Q. Yes.

A. So the scaffolding being out two or three feet from the boiler gives you a chance to pull them and drop them right down against the front of the boiler.

Q. And isn't it customary on some of the vessels to throw them up against the bulkhead and out of the way?

A. I have never seen it done. I guess it could be done just as easily.

[fol. 267] Q. Now, in the boiler room on the "Losmar" these valves that you speak of were directly in front of the center boiler?

A. Yes.

Q. But to either side of the center boiler you could still have room enough to put those retarders if you so wished, couldn't you?

The Witness: That question again, please.

(The question was repeated by the reporter, as follows:

"Q. But to either side of the center boiler you could still have room enough to put those retarders if you so wished, couldn't you?")

A. Certainly.

By Mr. Freedman:

Q. You are still working on the "Losmar"?
A. Yes, sir.

Mr. Freedman: That is all.
Mr. Bull: That is all.

(Recess, 1:45 until 2:45 o'clock P. M., D. S. T.)

George Green, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. Mr. Green, how long have you been going to sea?
[fol. 268] A. Twenty-five years.
Q. Speak a little louder, please.
A. Twenty-five years.
Q. How long have you held a license?
A. About twenty-three years.
Q. And what license do you hold now?
A. U. S. unlimited, chief engineer.
Q. And how long have you held that?
A. Twenty years.
Q. What ship were you on in February and March, 1935?
A. "Losmar".
Q. Are you still on the "Losmar"?
A. Still on the "Losmar".
Q. Do you remember the libellant in this case, Charles Taylor?
A. Yes.
Q. Was he in the engine room department?
A. Fireman.
Q. Fireman?
A. Yes.

Q. Do you remember where the "Losmar" was most of February?

A. Sparrows Point.

Q. That is in Maryland?

A. Maryland.

Q. Do you remember about when she arrived at Sparrows Point?

A. About the 4th of February, February 4th.

Q. And do you remember how long she was there?

[fol. 269] A. About three weeks.

Q. And what was she doing?

A. Just tied up.

Q. Where?

A. At Sparrows Point shipyard.

Q. Was she in dry dock?

A. No.

Q. But she was at the shipyard?

A. Yes.

Q. And from Sparrows Point where did she sail to?

A. Port Covington, then Philadelphia.

Q. And how long was she at Port Covington?

A. One day.

Q. That is in Baltimore, isn't it?

A. In Baltimore.

Q. And then she sailed to Philadelphia?

A. Philadelphia.

Q. And that was about what date?

A. About the 27th or 28th.

Q. Can you refresh your recollection in any way?

A. Yes, sir.

Mr. Freedman: May I ask what that is? Is that the same book?

By Mr. Bull:

Q. Tell us what it is, will you, Chief?

A. It is the log book, engine room log book.

[fol. 270] By Mr. Freedman:

Q. Made by you?

A. Made by me.

Q. All right, at the time that these things took place?

A. Every day, sir.

We arrived in Philadelphia on the 26th.

Mr. Freedman: Do you mind if I look at it?
Mr. Bull: No.

(The log book was shown to Mr. Freedman.)

By Mr. Bull:

Q. How long were you in Philadelphia?
A. Three full days.
Q. And then what did you do? Where did you go to?
A. Sailed for the Canal.
Q. Do you recall any injury or accident of Taylor's while the "Losmar" was at Baltimore——
A. No.
Q. —Sparrows Point? Did you ever hear after that of any trouble he had with his foot?
A. About three days from the Canal.
Q. That is before you got to the Canal, or——
A. Before we got to the Canal.
Q. And will you tell us what you heard or how you heard it and learned it then?
A. Well, I seen his shoe was cut open. I asked him what was the matter with his foot, and he told me he didn't know. [fol. 271] "Well," I said, "I would like to have a look at it." I had a look at it, and he had—his toes, in between his toes were sore.
Q. Which toes?
A. Well, I didn't pay any attention to which toes, it was just in his foot, and his toes were sore in between.
Q. Did you see what was sore?
A. Yes.
Q. Well, where was it, between his toes, on his toes, or just in between them?
A. Between them.
Q. And you don't recall which particular toes they were?
A. No.
Q. What was the nature of the sore which you saw as it appeared to you then?
A. Well, I would say it is what they call——

Mr. Freedman: That is objected to, not what they call, I have no objection to the witness testifying to what it looked like, but not what they call, or any conclusions. He can describe just what he saw, and that is all.

By Mr. Bull:

Q. All right, will you tell us what you saw?
A. His toes were red, slightly inflamed, from the itch, I would say.

Mr. Freedman: I move that that be stricken out, that is, "from the itch, I would say".

[fol. 272] By Mr. Bull:

Q. Well, what did the sore that you speak of between the toes look like to you? Was it open, or a scab, or what?
A. Just red and skinned.
Q. And skinned?
A. Yes, right inflamed.
Q. That is, between two of his toes, or more than two?
A. Two of his toes.
Q. And did you ask him about it?
A. Yes.
Q. What did he tell you about it?
A. He said it had been going—he had it for a long while; the time I didn't ask.
Q. Had he ever mentioned it to you before then?
A. Never.
Q. Did you ask him anything about his not speaking to you before about it?
A. No.
Q. Had you ever heard of it from anybody else before this?

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. Will you answer?
A. No.
Q. Do you remember when you arrived at the canal——
A. Yes.
Q. —the date? You may refresh your recollection if you want to.

(The witness examined the log book.)

[fol. 273] A. The 12th, we went th-ough the Canal on the 12th.

By Mr. Bull:

Q. Well, what month was that?

A. March.

Q. And you say you went th-ough there on the 12th?

A. Yes.

Q. When did you arrive at Colon?

A. Evening of the 11th.

Q. Then about what date was it when you say you noticed Taylor and asked him what was wrong with his foot?

A. That was the 9th.

Q. Did he tell you what he had done about his foot previous to that?

A. He had got some medicine and put on himself.

Q. Did he tell you where he got the medicine?

A. No.

Q. Do you remember when Taylor left the ship?

A. At the Canal.

Q. And that was on what date?

A. That was on the 12th.

Q. And do you remember where it was that he left it?

A. In the locks, I don't know whether you call them Miraflores, or the name of them, I just don't know.

Q. One of the locks?

A. In one of the locks.

Q. And did you see him when he went off the ship?

A. No.

[fol. 274] Q. Now, while you were at Baltimore did he ever say anything to you about his foot?

A. Never mentioned it.

Q. Did you know that he had any trouble with his foot then?

A. Never heard of it.

Q. Did he stand his watches then?

A. Yes.

Q. Did you know he had anything the matter with his foot after leaving Baltimore and before about the 9th of March, when you say you spoke to him?

A. No.

Q. Did he ever at any time tell you whether or not he had had any accident on the ship?

A. Never.

Q. Now, Chief, do you have any record of the work that is done on the boilers at Baltimore?

A. We keep a work book and every day I sign it up, in the evening, what is done aboard the ship.

Q. And do you recall when the retraders were taken out of the center boiler?

A. That was on February 11th. That was a Monday.

Q. A Monday?

A. Yes.

Q. And do you know what was done with them when they were taken off?

A. They are placed out in front of the boiler until the job is finished. Then they are put back.

[fol. 275] Q. Whereabouts in front of the boilers?

A. Right along the front, close to.

Q. Well, now, where were the retarders taken from the center boiler placed?

A. In front of the center boiler.

By Mr. Freedman:

Q. Just a moment, were you there at the time they were taken out?

A. Well, I am walking around the ship.

Q. Well, were you there when they were taken out?

A. No.

Mr. Freedman: I object to any testimony as to when they were taken out or where they were placed when they were taken out.

By Mr. Bull:

Q. How often were you around the engine room and boiler room, Chief?

A. Maybe thirty, forty times in a day.

Q. And if they had been out before Monday would you have noticed it?

A. Yes, sir.

Q. Did you notice them after they were out on Monday?

A. Yes, sir.

Q. And where were they?

A. In front of the boiler.

[fol. 276] Q. In front of which boiler?

A. Center boiler.

Q. And when they are taken out what is the usual and customary place for them to be put?

Mr. Freedman: Objected to.

A. In front of the boiler that you are working on.

By Mr. Bull:

Q. And were these which were taken on February 11th from the center boiler in the usual and customary place?
A. Yes.
Q. On the "Losmar" what is there on the bulkhead opposite the center boiler? Is there anything there?
A. There is oil pipes and there is valves on the floor plates for the oil tanks.
Q. Do you ever place those retarders over toward the bulkhead?
A. No.
Q. Did you say you are still on the "Losmar"?
A. Yes, sir.
Q. As chief engineer?
A. Yes, sir.
Q. Has there been any change in the boiler room since February, 1935?
A. No.

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. How do you gain access to the boiler room?
A. Through the engine room, through the alleyway.
[fol. 277] Q. And where is the alleyway?
A. It is between the center and starboard boilers.
Q. And in passing through that alleyway and into the boiler room is it on the same level or are there steps?
A. No, there are steps.
Q. To step up from the alleyway to the boiler room floor?

Mr. Freedman: I want to caution counsel to refrain from leading the witness. Now I think it is going a little bit too far.

By Mr. Bull:

Q. Will you answer the question, Chief?
A. There are two steps from the lower platform on to the fire room platform.

Q. Are they going up or going down?
A. Going up.

Mr. Freedman: Will you note my formal objection there, please?

By Mr. Bull:

Q. And as you go through this alleyway and into the boiler room is the center boiler on your right or on your left?
A. Left.
Q. How many generators do you have on there?
A. Two.
Q. Do you recall what their condition was in February, 1935?
A. Yes.
Q. What was it?
A. Good.
[fol. 278] Q. Were there any repairs made to them while you were——

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. —At Sparrows Point?

Mr. Freedman: Objected to.

A. No.

By Mr. Bull:

Q. Were you in charge of the whole engine room department?
A. Yes.
Q. Was there any trouble with either of the generators while you were there?
A. No.
Q. Was there any trouble with the electric light current while you were at Baltimore?
A. No.
Q. Was there any trouble with any of the electrical equipment while you were there?
A. No.
Q. Are all of those under your jurisdiction?
A. Yes.

Q. And are reports made to you by the other engineers and members of the engine room crew?

A. Yes.

Q. Are reports made to you of anything in the engine room department or jurisdiction with which there is any fault or difficulty?

[fol. 279] A. Yes.

Q. Did you ever have any reports of anything, any trouble or difficulty or anything wrong with the electrical equipment or generators?

Mr. Freedman: That is objected to.

A. Not at that time.

By Mr. Bull:

Q. When you say not at that time, you mean when?

A. At Sparrows Point, Baltimore.

Q. In February, 1935?

A. Yes.

Q. What are these retarders, Chief?

A. Oh, they are long spiral steel, about seven feet long, roughly, twisted, about an eighth thick.

Q. Eighth of an inch?

A. Yes.

Q. And about how wide?

A. Oh, an inch and a half, inch and a quarter.

Q. And what purpose do they serve?

A. It is for holding back the gases to give more heat to the boilers.

Q. That is, to retard the gases?

A. Retard the gases.

Q. Why are they taken out?

A. For the sake of cleaning the tubes. They get soot in them.

Q. How often is that done?

[fol. 280] A. Oh, that is done twice in three months.

Q. Twice in three months?

A. Yes.

Q. And is that done in port or at sea?

A. In port.

Q. Is there ever any occasion for doing it at sea?

A. No.

Q. What is their condition with respect to heat or cold when they are taken out?

A. They are a little warm, but they aren't hot.

Q. Well, when you were at Baltimore on February 11, 1935 you had been there at the shipyard for about seven days, hadn't you?

A. Yes.

Q. What was their condition then?

A. They were cool.

Q. One witness testified that when a ship is in dry dock the electric current is furnished from shore, that is, by the dry dock people. Is that right?

Mr. Freedman: That is objected to. I don't know that that is a fact. I ask counsel to state which witness, and if it is any of the preceding witnesses to today's testimony, there is his testimony, I ask him to read from the testimony.

A. If the ship is in dry dock the current is supplied by the wharf, but when the ship is alongside the wharf you supply your own current.

[fol. 281] By Mr. Bull:

Q. When you say you supply your own current when you are alongside of the wharf, does that mean when you are not in dry dock?

A. When you are not in dry dock.

Q. And were you in dry dock when you were in Baltimore in February, 1935?

A. I would just like to refresh my memory on that.

Q. All right, you may refresh your recollection all you want to.

(The witness examined the log.)

The Witness: I wouldn't swear to that.

By Mr. Bull:

Q. You don't know whether you were?

A. No.

Q. Well, does that mean all the time, or part of the time, or what?

A. We were——

Mr. Freedman: I object to that. The witness has already answered and he has consulted his book, and he says he wouldn't swear to it.

By Mr. Bull:

Q. Will you answer my question?
A. No, we would have only been in dry dock for two days.
Q. You would only be?
A. At the most, yes.
[fol. 282] Q. Well, would that two day—if you were in dry dock—would that two days be when you first went in there, or later?
A. When we first went in there.
Q. Well, on February——

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. Well, on February 9th were you in dry dock?
A. No.

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. Were you in dry dock on February 11th?
A. No.
Q. Do you know of any change of generators on February 9th, 1935?
A. No.
Q. Do you know of any change of the source of your current, electric current, on February 9th, 1935?
A. No.
Q. You were not on the ship all that day, were you?
A. No.
Q. If there were any change of that kind would it be reported to you?

Mr. Freedman: That is objected to.

A. Yes, and it would be in the work book, too.

[fol. 283] By Mr. Bull:

Q. Is there any evidence or indication of it in the work book?
A. No.

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. Did you check the work book regularly?
A. Yes.
Q. For what purpose?
A. Just to see what they put down, how the work is going on, and for a book of my own.

Mr. Bull: That is all.

Cross-examination.

By Mr. Freedman:

Q. How long have you been with the "Losmar", Chief?
A. Three years.
Q. How long have you been working for the Calmar Steamship Corporation?
A. Five years.
Q. Still employed by them?
A. Six—yes.
Q. What is your home address?
A. Staten Island.
Q. New York?
A. Yes.
Q. Do you have people in Baltimore?
A. No.
[fol. 284] Q. Do you have anybody to go to when you land in Baltimore?
A. Yes.
Q. Who do you go to?

Mr. Bull: I object to that. That has nothing to do with it.

By Mr. Freedman:

Q. Who do you go to?
A. Well, that is my business, isn't it?
Q. Well, I mean, is it friends or—I am not asking you to disclose any personal secrets, I am not after that, I mean, you go to make visits regularly to somebody——
A. No, not regularly. I may go and visit some people, yes.
Q. And you make them regularly every time you touch in Baltimore, don't you?
A. Almost; not every time.

Q. And you went to visit them on the 9th, on this particular day, didn't you?

A. Never in the daytime.

Q. Well, in the afternoon?

A. No.

Q. You mean to say that you didn't visit some people in Baltimore on February 9th?

A. Not in the daytime.

Q. On Saturday afternoon?

A. No, may have been nighttime, no.

[fol. 285] Q. Were you on the ship on that afternoon?

A. No.

Q. Well, where were you?

A. I was maybe in Staten Island.

Q. Well, the vessel was in Baltimore, you mean that you might have been in New York on that day?

A. I go home, yes.

Q. Well, what time did you leave the ship?

A. In the afternoon.

Q. About what time?

A. One o'clock.

Q. When did you first say that the shoe was cut on Taylor, that you saw the shoe cut on Taylor?

A. About three days before we came to the Canal.

Q. And what did the cut look like?

A. The shoe?

Q. Yes, the cut in the shoe.

A. Well, he just cut it to clear his toe. I paid no attention to it.

Q. What was the shape of it, shaped in an arc, or was it a straight cut?

A. That I don't remember, I just noticed that his shoe was cut, a piece of leather was cut out for him to let his toe through.

Q. You say you saw his toe at that time?

A. After he went back aft I looked——

[fol. 286] Q. Now, do I understand you correctly to say at the time you examined it it was red and inflamed and skinned?

A. I would say it was Dodie itch.

Q. I didn't ask you what you would say it was, I am only asking you to describe what you saw.

A. Well, it was red and I would say inflamed, red and inflamed.

Q. And skinned, too?

A. The skin——

Q. You testified to——

A. Tender skin, call it that.

Q. Well, now, wait a minute, the answer is either "yes" or "no". You said before that it was skinned. Now, which is it, was it skinned, or was it not skinned?

A. It was very thin, tender skin.

Q. You mean it was raw?

A. Yes.

Q. And bruised?

A. Not bruised, just raw.

Q. You mean it was just raw?

A. Yes.

Q. Now, you testified before without looking at your book that the retarders were taken out on February 11th.

A. Yes.

Q. Do you recall that from your own memory?

A. That was a Monday.

[fol. 287] Q. Well, now——

A. Well, I wouldn't——

Q. —you said February 11th.

A. It was a Monday, yes.

Q. You remember that distinctly, without consulting your book, is that right?

A. No, it was after I consulted the book.

Q. Well, I didn't see you look at the book, you looked at the book for other things.

A. What for?

Q. To see when the ship docked in certain places.

A. This work book?

Q. Your log book, sure. How was it you remembered that particular date from a year ago, and you don't remember some of these other dates and you had to consult the log book?

A. Because that was a case of where we put a man ashore, sick. You remember these things.

Q. Well, what connection does the pulling out of the retarders on February 11th have with putting a man ashore?

A. On February 11th—when the man claimed that he had hurt his foot in the fire room I looked back to see.

Q. When did you look back to see?

A. I guess that is about three months ago.

Q. From today, you mean?

A. Yes.

Q. Well, why didn't you look back to see some of these other dates?

[fol. 288] A. Well, I will do that, too.

Q. You don't have to do it now, I just want to know, I am only curious.

A. Well, because this——

Q. I want to know why you remember this particular date and you didn't the others.

A. The beginning of the month, on the dry docking, isn't in this book.

Q. I didn't say anything about the dry docking.

A. You did, you said how did I remember about that——

Q. I said that you didn't remember some of the other dates, you didn't remember when the ship reached Colon, or when it got to Baltimore, or when it got to Philadelphia, but February 11th, you remember that is the date when they took the retarders out. How do you remember that particular date?

A. Because I refreshed my memory in the work book. It is in the work book.

Q. You didn't look at the book, you looked at the book for other things, that is what I want to understand.

Mr. Bull: He said he did it before.

Mr. Freedman: No, he didn't. I don't want any suggestions from counsel. He is perfectly competent to answer the questions himself.

Mr. Bull: I think so.

[fol. 289] The Witness: I looked up the book, I say, about three months ago.

By Mr. Freedman:

Q. Well, why didn't you remember these other dates?

A. Well, I didn't bother.

Q. You realize, now, you are under oath, don't you?

A. Yes.

Q. You looked up just that one date three months ago, is that right?

A. Yes.

Q. Is that what you- answer is?

A. No, it isn't.

Q. Well, what is your answer?

A. I looked up, some fellow came before and asked about it, that is why I looked up those dates.

Q. Who asked you about it?

A. Oh, I don't know who he was.

Q. Well, didn't he ask you about any of the other dates? Did he just ask you that one question?

A. Well, that was the only thing I thought had anything to do with the case, as far as I was concerned.

Q. And you only thought that that one point had anything to do with the case, is that right? That was the only important point in the case? Am I correct in assuming that?

A. No.

Q. Well, now, what do you mean?

[fol. 290] A. The fellow told me his foot had been sore, and I had given my——

Q. What fellow told you?

A. Taylor.

Q. When did he tell you?

A. About three days before we got to the Canal.

Q. Yes.

A. I told him if he would take it, wash it with hot water and rub it hard, get all that out of it——

Q. Well, but you are getting away from the question, now, and that——

Mr. Wolff: Let him finish his answer.

Mr. Freedman: Well, it isn't responsive to the question.

Mr. Wolff: What is the question, anyway.

By Mr. Freedman:

Q. Were you finished with your question?

Mr. Bull: He wasn't asking questions.

By Mr. Freedman:

Q. Were you finished with your answer? Now, you were telling me why——

A. Well, I told him I thought if he would wash his feet good with hot water, rub it——

Q. Now, wait, you started to say why you looked up the pulling out of the retarders for that particular date when Taylor complained to you.

A. Well, I had a young fellow stop me one day in New York, and tell me that poor Taylor had lost his foot.

[fol. 291] Q. Now, just a minute ago you said—if it is necessary we will refer back to the testimony, but you said that when Taylor complained to you you looked back to see what date the retarders were pulled out.

A. No, I didn't say that at all.

Mr. Freedman: Could you, Mr. Stenographer, find some reference to that question and answer?

Mr. Bull: There wasn't any statement in there, I don't believe he could find it.

Mr. Freedman: Well, it is on the record.

(The testimony was repeated by the reporter, as follows:

"Q. Well, what connection does the pulling out of the retarders on February 11th have with putting a man ashore?

A. On February 11th—when the man claimed that he had hurt his foot in the fire room I looked back to see?

Q. When did you look back to see?

A. I guess that is about three months ago.

Q. From today, you mean?

A. Yes.")

Mr. Freedman: That is the one, that is what I am talking about.

Mr. Wolff: Well, what is the question?

Mr. Freedman: I guess you better read it back to me.

(The testimony was again repeated by the reporter.)

[fol. 292] By Mr. Freedman:

Q. So you looked back into the record because the man claimed he had hurt his foot in the fire room?

A. No, you didn't say it that way. I didn't get it that way from you?

Q. There it is in the record.

A. If the man went ashore at the Canal and three days before he didn't know what was wrong with his foot I certainly didn't look back——

Mr. Freedman: I object to that, and I move it be stricken from the record.

The Witness: I didn't figure he hurt his foot——

By Mr. Freedman:

Q. Why don't you confine yourself to answering these questions?

A. All right.

Q. Why do you evade them? You can answer them correctly.

A. I am not evading them. I have to think about something. That happened a long while ago.

Q. You mean it is vague in your mind now, is that right?

A. No, some of it may come up and some is vague, yes. I know when I worked at the fellow's foot, that is fresh——

Q. You mean you dressed it yourself?

A. No, I didn't.

Q. Well, what did you do when you worked on his foot?

A. I watched him working on his foot.

Q. Oh, you watched him working on his foot?

A. Yes, I ain't picking up peoples' feet.

[fol. 293] Q. You weren't in the boiler room when they took the retarders out, were you?

A. No.

Q. Now, do I understand correctly that you don't remember what days the vessel was in dry dock——

A. Yes.

Q. —is that right, and it might have been at any time during the period she was tied up at Sparrows Point?

A. At the beginning, the ship always goes in dry dock when you first get there.

Q. But you don't remember what days it was?

A. No.

Q. But you don't have a record of it?

A. Yes, we have a record of it.

Q. You don't have it here, do you?

A. I don't know.

(The witness examined a record book.)

By Mr. Freedman:

Q. What book is that? Was that book made by you?

A. I will tell you in a minute. She was in the dry dock previous to that——

Q. What book is that you are looking at?

A. That is a work book.

Q. Did you make that book?

A. No.

Mr. Freedman: Well, then, I object to your using that book.

[fol. 294] Mr. Bull: Can't help it, he is entitled—you can't take that book away from him.

Mr. Freedman: I object to the witness using any book which was not made by him or which was not made under his supervision.

The Witness: They are all made under my supervision.

Mr. Bull: It was made under his supervision. Ask him the question. You can't assume it wasn't made under his supervision.

By Mr. Freedman:

Q. Who made the book?

A. First assistant engineer.

Q. Who put the entries in the book?

A. First assistant engineer.

Q. Just him alone?

A. Yes.

Q. Nobody else was allowed to touch the book?

A. Nobody touched it but him.

Q. And what was the name of the first assistant?

A. Guy, J. Richard Guy.

Q. And did Mr. Guy make all the entries in that book?

A. Not all the entries, as he succeeded the other first assistant he put them in.

Q. Do you know what happened aboard on February 10th?

A. No.

Q. Do you know what the ship was doing then?

A. The ship was idle then.

[fol. 295] Q. You weren't there, were you?

A. I wasn't there.

Q. So you wouldn't know?

A. No.

Mr. Freedman: I object to all reference which were made to entries in a book made by anyone other than the witness, and I move that they be stricken from the record.

That is all.

Redirect examination.

By Mr. Bull:

Q. Chief, was the work book made by your first assistant——

A. Yes, sir.

Q. —under your supervision?

A. Under my supervision.

Q. Did you check it?

A. Always check it.

Q. Did you check the entries made in there by him?

A. Yes, sir.

Q. Is there anything in there to indicate that you did check it?

A. Yes, sir.

Q. What did you do to indicate that you had checked these entries?

A. Each item I checked, I would draw a little line alongside of it.

Q. Did I discuss this matter with you today before you testified?

Mr. Freedman: That is objected to.

[fol. 296] By Mr. Bull:

Q. Did I discuss it with you before you testified?

A. No, sir.

Q. What is that?

A. You said——

Q. I mean, you and I this morning, didn't we discuss this?

A. This book case?

Q. Yes.

Mr. Freedman: That is objected to.

Mr. Bull: Yes.

The Witness: Yes, sir.

By Mr. Bull:

Q. Did anybody, did they ask you to look up and see when the center boiler was cleaned, when the retarders were taken out?

A. You did.

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. When did I do it?
A. This morning.

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. And did you look it up?
A. Yes, sir.
Q. And were you able to refresh your recollection as to when it was done?

Mr. Freedman: That is objected to.

A. Yes, sir.

By Mr. Bull:

Q. And that was this morning?
[fol. 297] A. Yes, sir.
Q. And did you refresh your recollection then from the work book?
A. Yes, sir.
Q. And from entries which had been previously checked by you?
A. Yes, sir.
Q. When did you first know or hear that Taylor claimed that he had hurt his foot in the boiler room?
A. I never knew he had hurt his foot in the boiler room——
Q. Well, I asked——
A. —until you came down.
Q. And that was, you said, three months ago?

Mr. Freedman: That is objected to.

A. Yes, sir.

By Mr. Bull:

Q. Now, when I discussed it with you this morning did I ask you to refresh your recollection from anything as to the dates when she arrived at one place and when she left another place?

Mr. Freedman: That is objected to.

A. Yes, sir.

By Mr. Bull:

Q. And what did you use in refreshing your recollection as to the dates of movements of the vessel?

A. Looked up the work book.

Q. Have you been able to refresh your recollection and state definitely whether or not she was in dry dock at all?

[fol. 298] Mr. Freedman: That is objected to.

A. The ship wasn't in dry dock.

By Mr. Bull:

Q. She, what?

A. She wasn't in dry dock.

Q. Wasn't in dry dock, you mean while she was at Sparrows Point?

A. Oh, she was in dry dock, but at the beginning of the lay up she went in dry dock, she was in dock at the beginning of the lay up.

Q. Well what do you mean, the beginning of the lay up, what dates?

A. Well, that is the first few days.

Q. Well, how many is the first few days?

A. In the first week.

Q. What is that?

A. In the first week.

Q. Can you refresh your recollection from anything and tell when she came off dry dock?

A. I have nothing here to tell. I have got aboard the ship, though.

Q. You have nothing here that you can refresh your recollection from?

A. No.

Mr. Bull: That is all.

Recross-examination.

By Mr. Freedman:

Q. Do I understand, Chief, that you refreshed your recol- [fol. 299] lection for the first time this morning by looking at your books?

A. No, about three months ago, when a lawyer come down and asked me about it.
Q. You never looked at your books before that?
A. No.

Mr. Freedman: That is all.

Edgar E. Mulligan, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. What is your occupation, Mr. Mulligan?
A. Third mate on the "Losmar".
Q. You are still on the "Losmar"?
A. Yes, sir.
Q. You were on in February, 1935?
A. I was on the "Losmar" on February 9th, 1935.
Q. Do you remember the libellant, Charles Taylor?
A. I remember Charles Taylor, fireman.
Q. Were you third mate at that time?
A. I wasn't third mate, I was able seaman.
Q Did Taylor ever tell you anything about any injury to his foot?
A. He never told me anything about any injury to his foot.
[fol. 300] Q. Did you learn of any trouble he had with his foot before he left the ship?

Mr. Freedman: That is objected to.

A. I heard from rumors going around the ship that he had Dobie itch.

Mr. Freedman: I object to that and I move that it be stricken from the record.

By Mr. Bull:

Q. When did you first learn of any trouble to Taylor's foot?
A. A few days before we arrived in the Canal.

Q. Do you recall about when you arrived at the Canal?

A. Well, it was some time in March.

Q. And this, you say, was about how many days before you arrived there?

A. A few days, I couldn't say exactly.

Q. I mean, would you call a few two, or three, four, five, six, or what?

A. Two or three days.

Q. Did you see his foot then?

A. I did not.

Q. Did you ever see his foot?

A. I did not.

Q. Do you know whether or not the "Losmar" was in dry dock on February 9th, Saturday, February 9th, 1935?

A. No, I couldn't say for sure.

[fol. 301] Q. You don't have anything to do with the engine room department, do you?

A. Nothing to do with the engine room, no, sir.

Mr. Bull: That is all.

Cross-examination.

By Mr. Freedman:

Q. How long have you been working for the Calmar, Mr. Mulligan?

A. About six years, off and on.

Q. Were you ever quartermaster on the vessel, on the "Losmar"?

A. Able seaman.

Q. Were you ever a quartermaster?

A. No, I never acted as quartermaster.

Q. On this particular occasion you say you were an A. B.?

A. I was third mate from February 18th, I was made third mate, before that I was A. B. on it.

Q. February 18th, 1935?

A. Yes, I was made third mate.

Q. You were promoted from able seaman to third mate?

A. From able seaman to third mate.

Mr. Freedman: That is all.

Daniel Leslie Madison, having been duly sworn, was examined and testified as follows:

Direct examination.

[fol. 302] By Mr. Bull:

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Q. Are you on the "Losmar", Mr. Madison?
A. Yes, sir.
Q. What capacity?
A. Chief officer.
Q. And were you in February, 1935?
A. Yes, sir.
Q. What capacity?
A. Chief officer.
Q. Do you recall the libellant, Charles Taylor?
A. Yes, sir.
Q. Do you remember during what period you were at Sparrows Point, Maryland, in February, 1935?
A. I wouldn't say for sure, but we was there for about three weeks.
Q. Can you refresh your recollection as to when you arrived there and when you left there?

(A book was shown to the witness.)

Mr. Freedman: May I know what that book is, first?

By Mr. Bull:

Q. Will you tell him what the book is?
A. It is a log book of the deck department for the "Losmar".

By Mr. Freedman:

Q. Who made it?
A. I did.
Q. Just you alone?
A. Yes, sir.

[fol. 303] Mr. Bull: Now, the question was what?

(The question was repeated by the reporter, as follows:

"Can you refresh your recollection as to when you arrived there and when you left there?")

A. The shipyard?

By Mr. Bull:

Q. At Sparrows Point.

A. At Sparrows Point—I would say around the 4th of February.

Q. That it, 1935?

A. 1935.

Q. And how long did you remain there?

A. Until the 24th or 25th, of 1935.

Q. And where were you at Sparrows Point during that time?

A. In the shipyard.

Q. Can you state whether or not on February 9th, 1935, you were in dry dock?

A. No, I know we were not.

Q. You were not?

A. We were not in dry dock over the Friday, the 9th,—or, Saturday, the 9th, 1935.

Q. That is, on Saturday, the 9th, you weren't in dry dock——

A. No.

Q. —is that it?

A. I won't state when we were in dry dock, for I don't recollect that.

[fol. 304] Q. Was it before or after that?

A. Before, if any.

Q. And when you left Sparrows Point where did you go to?

A. Port Covington, for one day.

Q. And from Port Covington to where?

A. To Philadelphia.

Q. And from Philadelphia to where?

A. The Canal.

Q. And you were in Philadelphia about how long?

A. I would say three days, three and a part days.

Q. While you were in Baltimore did the libellant, Charles Taylor, report to you any accident?

A. No.

Q. Did he report to you any difficulty or trouble with his foot?

A. No.

Q. Did he report either or any of those things to you after you left Baltimore?

A. No.

Q. Or while you were at Philadelphia?

A. No.

Q. Did he while you were on the way from Philadelphia to the Canal?

A. No, he never reported anything to me.

Q. Did you ever see his foot when he had any trouble with it?

A. I saw it, I would say, two days before we got to the Canal.

[fol. 305] Q. What were the circumstances under which you saw it?

A. Well, I was working on the boat deck and I happened to pass the hospital where the steward was treating him, and I just stopped and looked at it and passed on.

Q. Do you recall what you saw then?

A. Well, his—his right foot between his little toe and the next one to it, there was an open sore.

Q. And were there any sores or cuts or bruises or anything outside of between those two toes?

A. No.

Q. And was it a very big sore?

A. Well, it was between the webbing of his toes, and it ran down under his toes. It had sort of a yellow pus collection on top of it, the way it looked to me.

Q. And at that time the steward was treating him?

A. Yes, sir.

Q. And did you say he had never reported that to you before this?

A. No, sir.

Q. Did you know that he went to the Marine Hospital at Baltimore while the "Losmar" was there——

A. No, sir.

Q. —in February? Did he ever get a certificate to the hospital from you?

A. No, sir.

[fol. 306] Q. Did you know that he was going to the Public Health Service in Philadelphia while the vessel was here, to have his foot looked at?

A. No, sir.

Q. Did you give him a hospital certificate to go there?

A. No, sir.

Q. Did he ever ask you for one?

A. No, sir.

Q. Did he tell you he was going there?

A. No, sir.

Q. Did he tell you after he came back that he had been there?

A. No, sir.

Q. Did you yourself ever treat the foot?

A. No, sir.

Q. Did Taylor ever mention his foot to you?

A. No, sir.

Q. When you saw it on this day you speak of, shortly before you reached the Canal, did you have any conversation with Taylor?

A. No, sir.

Q. Did you hear him say anything to the steward?

A. No, sir.

Mr. Bull: That is all.

Cross-examination.

By Mr. Freedman:

Q. Am I correct in understanding, Chief, that you don't remember what day the ship was in dry dock, what day or days?

[fol. 307] A. No, but if she was in dry dock it was after she had finished her discharging, and then she goes to dry dock, right in dry dock.

Q. Well——

A. And then if there is any idle period——

Q. Now, listen, Chief, I just asked you a question, it calls for a "yes" or "no" answer, I don't want any lengthy discussion, either you do know or don't know. If you don't know, just say so.

A. Well, it wasn't in on February 9th.

Q. I didn't ask you that. I asked you whether you remember when the ship was in dry dock.

A. No.

Q. You don't remember that?

A. No. They never leave them in over the week end.

Q. When did you say you first saw the foot, Mr. Madison?

A. Couple days before we got to the Canal.

Q. About two days before?

A. Yes, may have been the day before, I don't recall, but it was before we got to the——

Q. I am only asking you approximately, and it was on that day that you saw it was sore?

A. Yes, there was a pus discharge in the foot when I saw it.

Q. And you say the steward was treating it on that day?

A. Yes, sir.

Q. Do you make an entry in your book or any place every time a man asks you for a hospital slip, Mr. Madison?

[fol. 308] A. No, not in the log book. I always inform the Captain, and he signs them all.

Q. Do you ever sign them?

A. No, sir.

Q. A man can get in the hospital, though, with his discharge, isn't that a fact?

A. I have been told they can. I have never gone in myself, so I can't say. I have been told you can.

Q. You can use your discharge to get in the hospital.

A. I have been told; I don't know.

Q. Did you ever tell a man to use his discharge?

A. No, sir.

Q. You never told anybody——

A. No, sir.

Q. —to use a discharge. Did you ever give out many hospital slips?

A. Several, quite a few, in fact, almost all that is issued from the ship, I fill out, with the Captain's signature.

Q. Well, how many hospital slips would you say you gave out during the last year?

A. Well, I couldn't say.

Q. Well, just about.

A. Well, I won't say, for I don't have any idea.

Q. Was it ten?

A. I won't say.

Q. Was it more than ten?

A. I won't say. I don't know.

[fol. 309] Q. Do you remember every man that you give a hospital slip to?

A. No.

Q. Did you ever turn a man down when he asked you for a hospital slip?

A. No, sir.

Q. In other words, every man who ever asked you for a hospital slip got one?

A. Yes, sir.

Q. Unless, of course, the Captain wasn't there to sign it.

A. No, I never turn them down even——

Q. No, I don't mean that. Of course, you couldn't give them a hospital slip if the Captain wasn't there.

A. I have the power to do it, but I don't.

Q. In other words, the only time you wouldn't give a man a slip was when the Captain wasn't around, is that right?

A. No, I could give a slip then and sign in my own name.

Q. I know, but you say you don't do it, though. I only want to get it straight.

A. I don't do it, no. I haven't been called on to do it.

Mr. Freedman: That is all.

Frank Zarraga, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. Mr. Zarraga, what is your business?

[fol. 310] A. Steward.

Q. What ship are you on?

A. I am not on a ship now.

Q. What ship were you on in February and March, 1935?

A. "Losmar".

Q. In what capacity?

A. Steward.

Q. How long were you on the "Losmar"?

A. Since the 11th of October, 1934.

Q. 1934?

A. 1934.

Q. And at the present time you are not on any ship?

A. No, sir.

Q. Do you remember Charles Taylor?

A. Yes, sir.

Q. What department was he in?

A. Fireman, engine room department.

Q. And do you remember when the "Losmar" was at Sparrows Point, Maryland, in February, 1935?

A. Between—I believe we arrived between the 4th and 5th of February, 1935.

Q. And how long were you there?

A. Nineteen or twenty days.

Q. And where were you while you were at Sparrows Point?

A. Aboard the ship.

Q. I mean, where was the ship?

A. In the shipyard.

[fol. 311] Q. Was she in dry dock, or just in the yard?

A. I don't recall being in dry dock.

Q. Where did you go, where did the "Losmar" go from Sparrows Point?

A. We went to High Wharf to load, and then to Port Covington.

Q. And then over to Port Covington?

A. Yes, sir.

Q. And from there where did you go?

A. Philadelphia.

Q. Do you remember about when you arrived at Philadelphia?

A. 26th, I believe.

Q. And do you remember how long you were at Philadelphia?

A. Six or seven days.

Q. Do you remember about the date when you left Philadelphia?

A. I believe it was about the 3rd, 3rd of March.

Q. And where were you bound for when you left Philadelphia?

A. San Pedro.

Q. California?

A. Yes, sir.

Q. By way of the Panama Canal?

A. By way of the Panama Canal.

Q. Do you recall when you reached the Canal?

A. The 11th, at nighttime.

Q. On the night of the 11th of March?

A. March, yes, sir, early part of the night, it was.

Q. What is that?

[fol. 312] A. Early part of the night, nine or ten o'clock, I believe it was.

Q. When you were at Baltimore did you treat Taylor's foot?

A. No, sir.

Q. Did Taylor report any accident to you?

A. No, sir.

Q. Did he tell you he had a sore foot?

A. I met him one day going ashore, I was coming from the office to get mail, I said, "where are you going?" He says, "I am going to Marine Hospital." "What is the matter?" "My foot." That is all.

Q. What else was said?

A. Nothing else.

Q. Did he tell you what was the matter with his foot?

A. No.

Q. How was he dressed at that time?

A. Dressed up like a common seaman is, dressed up to go on shore to a doctor.

Q. And how was he walking?

A. I didn't see any sign of anything, walking, walk was very straight, same as ever.

Q. Did you notice his shoes?

A. Yes, sir.

Q. Did he have shoes on?

A. Sunday shoes, what they call Sunday shoes.

Q. Were they cut——

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. —or open in any way?

[fol. 313] A. Beg pardon?

Q. Were they cut or open in any way?

Mr. Freedman: That is objected to.

A. Shoes?

By Mr. Bull:

Q. Yes.

A. No, sir, he had good shoes on.

Q. Did you ask him anything about his foot then?

A. No, sir, I didn't know anything about his foot.

Q. After that did he——

Mr. Freedman: Pardon me, will you identify the date, when you say "then"?

Mr. Bull: All right.

By Mr. Bull:

Q. About when was this, about what date?

A. It was about between the 11th and 12th, I am not sure whether it was the 11th or 12th, Monday or Tuesday.

Q. Of February?

A. February.

Q. 1935?

A. Yes, sir.

Q. And after seeing him going ashore that time, later that day did you see him again?

A. Yes, sir.

Q. Did he say anything about having been in the Marine Hospital?

A. Yes, sir.

[fol. 314] Q. What did he say?

A. He said he was going to Marine Hospital. I asked him, I said, "Where are you going?" He said, "To Marine Hospital."

Q. No, I mean after that.

A. That was the second time I saw him going ashore, and I asked him again.

Q. Oh, about when was that, about what date?

A. Oh, about the 16th.

Q. And——

A. Between the 15th and 16th.

Q. —you saw him going ashore?

A. That is right.

Q. And what did you say to him?

A. I asked him I says, "Where are you going"——

Q. Yes.

A. —in a friendly way, you know, I says, "Where are you going, Taylor?" He says, "I am going to Marine Hospital".

Q. And did he say why he was going?

A. No, didn't say nothing at all.

Q. Did you ask him why?

A. No, I didn't ask him why, I just asked him where he was going.

Q. Now, at any time in there, before that, had he come to you for any treatment?

A. No, sir. The trip before he did.

Q. The trip before?

A. Yes, sir.

[fol. 315] Q. You mean before February——

A. Yes, sir.

Q. —1935?

A. Yes, sir.

Q. Well, on this last time, which you say was probbaly around the 16th——

A. Yes, sir.

Q. —did you see him after he came back on the ship?

A. Oh, yes, see him on the ship.

Q. Did he say anything about having been to the Marine Hospital then?

A. No, sir.

Q. Did he say anything about his foot?

A. No, sir, not a thing.

Q. Did he show his foot to you?

A. No, sir.

Q. Did he ask you for any treatment?

A. No, sir.

Q. Did he mention it in any way again before you left Baltimore?

A. Never to me.

Q. Did he ever ask you for any treatment of any kind before you left Baltimore?

A. No, sir.

Q. Did he mention it or ask you for any treatment on the voyage from Baltimore to Philadelphia?

[fol. 316] A. No, sir.

Q. Did he mention it or ask for any treatment while you were at Philadelphia?

A. After we arrived, we arrived Philadelphia?

Q. After you arrived at Philadelphia.

A. No, sir.

Q. Nor while you were here?

A. No, sir.

Q. Did he tell you he was going to the Public Health Service for any treatment in Philadelphia?

A. He told me that.

Q. When did he tell you that?

A. That was the 5th of March.

Q. The 5th of March?

A. Yes, sir.

Q. That was——

Mr. Freedman: First of March, I think he said.

By Mr. Bull:

Q. Did you say the first or fifth?

A. Fifth.

Mr. Freedman: I beg your pardon.

By Mr. Bull:

Q. Fifth of March?
A. Fifth.
Q. And were you at Philadelphia then?
A. No, sir, at sea.
[fol. 317] Q. You were at sea, that was after you had sailed from Philadelphia for your West Coast voyage?
A. That was the first time I ever treat him.
Q. That was the first time you ever treated him?
A. Yes, sir.
Q. Well, nothing had been said by him, however, before you left Philadelphia?
A. No, sir, nothing at all.

Mr. Freedman: That is objected to. I ask counsel not to lead the witness.

Mr. Bull: He just said that. If you want to delay the thing all day, all right.

Mr. Freedman: Well, I think he ought to be permitted to tell the story himself.

By Mr. Bull:

Q. What was said by him after you left Philadelphia on the fifth of March, I think you said?
A. On the fifth he came to me, he came to me, he says "Steward, look, look at my toes."
I says, "What is the matter with your toes?"
He says, "Look at them," and I says, "By God," I says, "what happened?"
He says, "That is what I went to the hospital for in Baltimore, and I went in Philadelphia, too."
I said, "You have the guts to stand on the foot like that and come to a ship? Don't you know that is dangerous?"
[fol. 318] Q. What did he say?
A. He didn't say nothing, he says, "Oh, I thought it was going to be all right," and that is all.
Q. Did he say what had been done for it?
A. No, he told me they gave him medicine.
Q. Told you they gave him medicine?
A. Yes, medicine.
Q. Will you tell us, he bared his foot that time, did he, showed you his bare foot?

A. Yes, sir.

Q. And what did you see?

A. It was between two toes, big crack.

Q. What two toes?

A. The small one and the next one.

Q. That is, the fourth and fifth toes?

A. Yes, sir.

Q. And that is on his right foot?

A. Right foot, yes, sir.

Q. How did you describe it, what you saw?

A. It was cracked, just cracked.

Q. Cracked?

A. About three quarters of an inch in length underneath, and about half inch on the top.

Q. And where was it cracked more, on the top or bottom?

A. On the bottom.

Q. Was there anything else about the toes that looked injured?

[fol. 319] A. No, not at all, only that one.

Q. Did you ask him how it happened?

A. I asked him how it happened. He says, "Well, it is this."

"How did you get that?"

He says, "There was a little crack, and I thought it was going to be all right, and getting worse every day."

I says, "If I was you, and can hardly work now," I says, "I don't work, either, I don't go down to the fire room," I says, "If I was you, I wouldn't wear black socks, either, either white socks or else nothing," I says, "If I was you, I wouldn't wear black socks, white socks or nothing, uncovered, and the air circulating."

Q. Did you treat his foot then?

A. Yes, sir.

Q. What did you do about it?

A. I put friars' balsam, twice.

Q. Friars' balsam?

A. Yes, before I put friars' balsam I washed his toes, disinfect.

Q. With what?

A. With water and Lysol, Lysol and water. Then I put friars' balsam, put twice, and then I put boric acid ointment.

Q. When you say you put friars' balsam on twice you mean once right after the other?

A. No, sir, one day after the other.

Q. Oh, put it on one day, and then put it on the next day?

A. Yes, I told him afterward to come to me all the time to see it.

[fol. 320] Q. How many days did you treat him after that?

A. About five or six days.

Q. Well, did you treat him——

A. Until the day he went ashore.

Q. —the day he went ashore?

A. That day I never touched him; the day before, the day we arrived at Panama Canal was the last day, I done it eight o'clock at night.

Q. And how often, how many times a day would you see him?

A. Twice.

Q. Twice a day?

A. Yes.

Q. What time?

A. Eight o'clock, morning, after eight o'clock in the morning, and after eight o'clock at night.

Q. That was after he came off watch?

A. Off watch, yes, sir.

Q. And what did your subsequent treatments consist of, after that first one?

A. I give him twice, I give him friars' balsam, and afterwards, when I—he told me himself, he says, "Oh, God, when you put that, that stuff burned, but it is all right now, it is getting better every day."

I says, "I hope so," because it didn't look to me any better, and I says, "All right, we are going to stop putting this, and put some boric acid ointment," and I keep on with boric acid ointment all the time afterward.

[fol. 321] Q. Did you have charge of the medical supplies on board?

A. Not entirely, the mate and I had a key, and so the Captain had a key.

Q. The mate and you and the Captain?

A. Yes.

Q. Anybody else?

A. No, sir, but they always leave it to me, on account of being customary in the company, and experience.

Q. Was there a fellow there named Aaronson?

A. Yes, sir, James Aaronson.

Q. He was a sort of utility man, was he?

A. Yes, sir.

Q. Did he have a key to the medicine?

A. No, sir, nobody but the mate, the captain, and I.

Q. Did Aaronson ever get your key from you?

A. Never.

Q. Did Aaronson ever report to you that he knew of Taylor's foot trouble?

A. No.

Mr. Freedman: Objected to.

The Witness: No, sir.

By Mr. Bull:

Q. Did Taylor ever report to you before March 5th?

A. No, sir.

Q. Did you ever see his foot before March 5th?

A. No, sir.

Q. Did he ever ask you to look at it——

A. No, sir.

Q. —before March 5th?

[fol. 322] A. I am not supposed to do anything like that in port.

Q. In port?

A. I am not supposed to do anything like that in port, only in case of emergency.

Q. Emergencies?

A. In case of an accident.

Q. And did Taylor ever tell you that he had an accident?

A. No, sir.

Q. You treated him, you say, twice a day from March 5th?

A. From March 5th to the 11th.

Q. Until March 11th?

A. Until the day we arrived in Panama Canal, and the following day he went ashore.

Q. And during that time did he ever tell you of having had any accident on the ship?

A. No, sir.

Q. Did he ever give you any explanation of how this trouble with his foot first occurred?

A. Only when I asked him, I says, "How did this happen?"

He says to me, "It was a little cut between the toes, I thought it would be all right, that is what I was going to Marine Hospital for."

That is the only way I know he went to the Marine Hospital.

Q. And when did you say he first told you about going to the Public Health Station in Philadelphia?

A. That was about—oh, in Philadelphia?

Q. Yes.

[fol. 323] A. That was at sea, the 5th?

Q. On the 5th of March?

A. Yes, the first day I give him treatment, when I asked him.

Q. Did you see him——

A. I asked him, I says, "By God, why didn't you stay on shore and go to the hospital?"

He says, "I been in the hospital in Philadelphia, while I was in Philadelphia, too."

Q. Did you see him when he left the ship?

A. I see him going ashore.

Q. Saw him going ashore?

A. Yes, sir.

Q. Who took him ashore?

A. He was walking, only a nigger, with the doctor, went up to him, always helping the people going ashore.

Q. He had come on with the doctor?

A. Yes, sir.

Q. Do you know whether Taylor continued to stand his watches on the ship?

A. As far as I know, he never lose a watch. I told him to, to keep away from work, I says, "Might be you will spoil yourself."

Q. What did he say about that?

A. He keep on working, he didn't say nothing, he keep on working.

Q. Did you at any time see any of his shoe cut away?

[fol. 324] A. Yes, sir, when he came to me, when he came to me for treatment.

Q. On March 5th?

A. Yes, sir, he had his shoe cut.

Q. What did you notice then about his shoe?

A. Well, just it was, like, cut from here (indicating).

Q. Well, now, just a minute, we can't get that on the paper.

A. Oh.

Q. Describe it, will you, in words?

A. Just from the point of the shoe; in the toe, the big toe, was cut in a piece like that (indicating).

Q. Like from the big toe down to back of the base of the little toe?

A. Yes, sir.

Q. And in front of that was cut off?

A. All cut off, yes, sir.

Q. So that his toe could be out?

A. Out, out of the shoe.

By Mr. Freedman:

Q. Which toe?

By Mr. Bull:

Q. Which toe?

A. The little toe.

Q. On his right foot?

A. Yes, sir.

Q. Now, you stated that you had treated Taylor on the preceding voyage?

[fol. 325] A. For boils on his arm, yes, sir.

Mr. Freedman: I object to this.

Mr. Bull: That is all.

Cross-examination.

By Mr. Freedman:

Q. You say you are not employed now, Mr. Zarraga?

A. Pardon?

Q. You say you are not employed now?

A. No, sir.

Q. Not working?

A. No, sir.

Q. When did you stop working?

A. The second of last month.

Q. Second of when?

A. Second of last month.

Q. Second of last month, and what ship did you leave at that time?

A. The "Bethore".

Q. The which?

A. "Bethore".

Q. "Bethore". What company does that belong to?

A. Ore Line, Bethlehem Steel.

Q. Bethlehem Steel?

A. Ore Line.

Q. That is a subsidiary of the Bethlehem Steel?

A. Yes, sir.

Q. The same as the Calmar?

[fol. 326] A. Yes.

Q. Why did you leave the last boat?

A. Why did I leave?

Q. Why did you leave it?

A. Why did I leave?

Q. Yes, were you discharged from the boat?

A. Sure.

Q. Were you fired?

A. Well, not fired, transferred.

Q. What is that?

A. Transferred.

Q. Oh, transferred; where to?

A. I don't know what ship they are going to send me.

Q. You mean you have to go back on another ship now?

A. Yes.

Q. On the Calmar?

A. I don't know which one, Calmar, or the Ore Line, whichever they send me.

Q. But you are waiting now to go back with the same company?

A. Yes, sir.

Q. Either the Calmar or the other one?

A. Yes, sir.

Q. And they are both subsidiaries of the Bethlehem Steel?

A. Yes, sir.

Q. Now, were you on board the "Losmar" on February 10th——

A. Yes, sir.

Q. —1935?

[fol. 327] A. Yes, sir.

Q. Do you remember what happened on that day?

A. February 10th——

Q. Now, wait, I am not asking you what happened, I am only asking you whether you remember, first.

Mr. Bull: Well now——

Mr. Wolff: What is it?

By Mr. Freedman:

Q. I am only asking you whether you remember what happened on that day.

Mr. Bull: Everything that happened on that day?

Mr. Freedman: Well, whether he recalls what happened on that day. If he doesn't——

Mr. Bull: What do you mean, recalls what happened on that day?

Mr. Freedman: Well, the witness can answer. He is competent to answer. If you have any objection——

The Witness: Which way?

By Mr. Freedman:

Q. What is that?

A. Which way, what happened, which way?

Q. I mean, do you remember what happened on that day?

Mr. Bull: I object to the question.

Mr. Freedman: All right, you can object.

Mr. Bull: Yes.

By Mr. Freedman:

Q. Do you remember what happened on that day?

[fol. 328] A. Nothing to me, that I know of.

Q. You don't remember that, do you?

A. Nothing to me.

Q. You say you treat all the men, Mr. Zarraga?

A. Yes, sir, at sea.

Q. At sea?

A. At sea.

Q. You never treat them in port?

A. Only in emergency.

Q. Yes, have you ever treated any in port?

A. Yes, sir.

Q. Well, how many would you say you treated in port, many?

A. Plenty, the years I have been with the company, plenty.

Q. In port.

A. Yes, fellow like here, for instance, in Philadelphia, mashed his finger.

Q. You always treat them?

A. Yes.

Q. You know quite a bit about first aid?

A. Little bit, not much; experience.

Q. Well, how many cases would you say you treated in port?

Mr. Wolff: What kind of cases?

A. Oh, maybe——

Mr. Freedman: Any kind of cases.

A. —forty, fifty, sixty, small cases, smashed fingers.

By Mr. Freedman:

Q. Do you remember every case that you treated?

[fol. 329] A. No, sir.

Q. Don't remember? You couldn't remember every treatment you gave a man, could you?

A. No, could not.

Q. Especially if it happened a year ago, you couldn't remember every treatment that happened last year, could you?

A. Oh, I remember much longer than that, I remember the Captain at Panama twelve years ago.

Q. Do you remember every treatment you give?

A. Not every one, I don't remember the names.

Q. You don't remember the men?

A. No, because some of them are strangers, longshoremen, some of them are strangers.

Q. Now, when you dressed Taylor's wound for the first time he said to you that he stubbed his toe, did he not?

A. Pardon?

Q. Didn't he say to you that he stubbed his toe?

A. No.

Q. Just stubbed his toe walking, didn't he say how he got the cut?

A. No, I asked him, I says, "How does that happen?" He said, "It was a little cut." That is what he told me.

Q. He didn't tell you how he got the cut?

A. No, sir.

Q. Didn't he say he stubbed his toe?

A. No, never said anything to me.

[fol. 330] Q. When you saw him going to Baltimore didn't he tell you——

A. Nothing at all.

Q. —how he got the cut?

A. I was going from the office to see if there was any mail, mail from Sparrows Point going to shipyard, I was always going to collect the mail in the morning, I see him going down, going ashore.

Q. You didn't care anything about it at that time, because you were in port?

A. Beg pardon?

Q. You didn't know anything about it at that time?

A. If anybody got hurt, sure, come to me, stop bleeding, or anything like that, that is all. Then I send to a hospital right away.

Q. You say when you saw Mr. Taylor about that time, when he was going to the hospital, he was wearing a brand new pair of shoes?

A. No, sir, I didn't say brand new pair of shoes.

Q. Or, new pair of shoes?

A. Sunday shoes, same like mine.

Q. Is that the same kind he worked on board ship with?

A. No, sir.

Q. Different kind?

A. Sure.

Q. Did you ever see him in an old pair of shoes?

A. Sure.

[fol. 331] Q. Did you see him with the other shoes while he was on board ship during that trip?

A. Sure, I seen him.

Q. Well, was there a cut on those shoes at that time?

A. Well, see, I can't notice every time he comes up on deck.

Q. No, any time, did you notice that his right shoe was cut anywhere, just a little cut?

A. When he came to me, that is the first time I noticed it.

Q. What is that?

A. When he came to me for treatment, that is the first time I noticed it.

Q. You didn't notice the shoe while he was in port?

A. No, sir. When I seen him in port he always has good shoes on.

Q. Good shoes?

A. And his working shoes.

Q. That is what I am asking you about, Mr. Zarraga. I am not quite clear on that, I want to find out. These working shoes he was wearing, didn't they have a little cut, or didn't they have a little cut over the little toe?

A. Not that I know of.

Q. Weren't they cut?

A. Afterwards they were cut, yes, afterwards they had a big cut.

Q. When you first saw it on board ship there was a little cut?

[fol. 332] A. I didn't see that.

Q. Not a big hole, just a little cut.

A. I didn't see that.

Q. You mean you don't remember, or you didn't see?

A. I didn't see it, because as a man comes down the deck you don't notice what he is wearing.

Q. Well, would you say you are sure it wasn't, or that you just didn't notice it?

A. I didn't say I was sure, I ain't sure one way or the other.

Q. You mean you just didn't notice it?

A. I didn't notice his shoes while he was working in Baltimore.

Q. Didn't notice them?

A. If I see you on the street I don't look at your clothes, don't take notice of everything.

Q. You mean you just didn't notice whether it was or not?

A. No, I didn't notice. How can I notice, say, a man walking down the deck? No reason whatever to do it.

Q. Now, when you first treated him on March 5th you testified before that on that day his toe looked very bad?

A. Yes.

Q. And that it was cut around the side, and on top, and on the bottom.

Mr. Bull: No, he didn't.

By Mr. Freedman:

Q. You said on the top and on the bottom?

[fol. 333] A. No.

Q. Where was it?

A. I say no cut, I say open.

Q. Well, where was it cut?

A. The cut was more on the bottom that it is on the top.

Q. More on the bottom?

A. Than it is on the top.

Q. What do you mean by the top?

A. Top is right here, isn't it?

Q. On the outside of the toe?

A. Inside.

By Mr. Bull:

Q. Between the toes?

A. Between the two toes, in between the two toes. The crack between the two toes was longer on the bottom than it was on the top.

By Mr. Freedman:

Q. Was it a bad crack?

A. It was a bad crack, I think it was.

Q. And when you first treated him you washed it out first, is that right?

A. Yes, sir.

Q. And what did you say that you used to wash it out first?

A. Water and Lysol.

Q. Lysol.

A. Yes; sir.

Q. Did that help him out much?

[fol. 334] A. No, that is disinfectant, only.

Q. Oh, a disinfectant?

A. Yes.

Q. Why did you use a disinfectant?

A. To clean it out.

Q. To clean it out?

A. And then put medicine in.

Q. Did you use much Lysol?

A. No, just little bit, just enough to disinfect.

Q. Used Lysol, and what did you do after that?

A. Put friars' balsam.

Q. Did you always do that when you treated him, always wash it out first?

A. Yes, sir.

Q. Lysol?

A. Lysol, or peroxide, or mercury tablets.

Q. Mercury tablets?

A. Yes, sir.

Q. You always washed it out before you put this——

A. Yes, sir.

Q. —friars' balsam on?

A. Anywhere you get any kind of opening or cut, have to be disinfected first.

Q. Do you ever make up any of the reports of accidents, Mr. Zarraga?

A. I give to the Captain.

Q. You give them to the Captain?

A. Yes, sir.

[fol. 335] Q. But you make them up first when the men give them to you?

A. Yes, I take pencil.

Q. Did you make any report on Taylor's case?

A. Yes, sir.

Q. You did?

A. Yes, sir.

Q. Well, didn't you state—did you state on your report that he stubbed his toe? You only have to put on there what Taylor told you, of course.

A. No, sir, I didn't put nothing of the kind, I told you.

Q. What did you have on your report?

A. The only thing on the report is the treatment that I gave.

Q. You didn't say how he got hurt?

A. No, I am supposed to put down everything I use. That is for the company's record.

Q. Was Mr. Aaronson in your department, Mr. Zarraga?

A. Yes, sir.

Q. He was in your department?

A. Yes, sir.

Q. Did he work under you?

A. Yes, sir.

Q. Is it customary, Mr. Zarraga, when you are not around that one of the other men in your department treats these injuries?

A. No, sir.

Q. But the men always do come to the steward's department when they want to be treated, is that right? [fol. 336]

A. Not to the steward's department; to the steward and to the officers. Firemen, mostly firemen go to the chief engineer chief engineer sends them to me or to the Captain.

Q. Always send them to the steward?

A. Steward or the Captain or the mate. The company has orders not to let anybody touch but the three of us.

Q. Did you ever find out that this man stubbed his toe, Mr. Zarraga?

A. No, I never find out anything at all.

Q. Did you ever hear about it before?

A. Never.

Q. Never heard that he had an accident to his toe?

A. No, sir.

Mr. Freedman: That is all.

Redirect examination.

By Mr. Bull:

Q. Mr. Zarraga, who else was under you besides Aaronson?

A. Oh, I had a fellow by the name of Tony Rocha.

Q. I mean, what were their positions, what did they do?

A. Oh, Aaronson was utility man.

Q. Yes.

A. We had a fellow name of Bell, cook, and I got two mess boys, one back aft—two back aft, and one in the saloon with me; six altogether.

Q. Six men under you?

A. Five and myself, six.

[fol. 337] Q. Five men under you. Aaronson was one of those?

A. Yes, sir.

Q. And was Aaronson ever in charge of the steward's department?

A. Yes, sir, after that, yes.

Q. After that?

A. Yes, sir.

Q. While you were steward was he ever in charge of the steward's department?

A. Oh, no, sir.

Q. Was anybody in charge of the steward's department besides you at any time?

A. No, sir.

Q. And if you were off the ship at any time would any of those men under you be in charge of the department?

A. To a certain extent the chief cook, for the cooking, only.

Q. The cook?

A. The chief cook, for the cooking, only.

Q. In other words, he would be the highest ranking man under you in the steward's department?

A. Yes, sir.

Q. I notice when you testified you referred to this between Taylor's two toes as a crack, and when Mr. Freedman was examining you he would refer to it as a cut.

A. No, sir.

Q. Would you call it a cut or a crack?

[fol. 338] A. Crack. I didn't say cut.

Q. Did you notice any cut between the toes——

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. —or on his toes?

A. No, sir, I didn't notice any cut at all.

Q. Did you notice any bruises on there?

A. No, sir, just a crack, just the opening between the toes, that is all I can testify, that is all I saw.

Q. That is all that was noticeable to you any time you saw it?

A. That is all there was.

Q. And when you asked Taylor about it and he told you it had started with a little—what?

A. Little cut, that is all he says, little cut.

Q. Little cut, or crack?

A. Little cut——

Mr. Freedman: He answered the question.

A. Little cut underneath here, that is all (indicating).

By Mr. Bull:

Q. And where did he say that was?

A. He didn't say nothing else to me.

Q. Said nothing else to you?

A. No.

Q. Do you remember whether or not you were on board the "Losmar" at four o'clock on the afternoon of Saturday, February 9th, 1935?

A. Yes, sir.

Q. Were you asleep or awake?

[fol. 339] A. Awake. That is the time I get the stores out.

Q. Get what?

A. I gave my stores out before I go in the afternoon to the mess boys.

Q. Did the lights go out on that afternoon?

A. Not that I remember, because I went to the ice box to get my butter and my jam and everything, to mess boys. Lights was on.

Q. Do you recall whether or not you were on at eight o'clock that night?

A. I don't think I was. I think I was on shore eight o'clock at night.

Q. Do you recall whether or not Aaronson was on board that night at eight o'clock?

A. I don't think he was, I believe he was with me. He was in my company, I believe, I am not sure.

Mr. Freedman: I move that be stricken from the record.

Mr. Bull: That is all.

Recross-examination.

By Mr. Freedman:

Q. Do you remember what happened on February 16th, Mr. Zarraga?

Mr. Bull: Well, I object to the question.

A. I don't know which way——

Mr. Freedman: All right, just note the objection.

By Mr. Freedman:

Q. What?

A. I don't know which way.

[fol. 340] Q. Well, did anything happen, did the lights go out on February 16th?

A. I never saw lights out on the "Losmar" ever since I was on board the ship. Only one time, the trip before that one, when we went to the dry dock in Baltimore, dry dock in Baltimore.

Q. Yes.

A. When they took the light, the power off of the ship, and put the shore power on board, hooked on the shore power.

Q. When was that?

A. That was the trip before. That was in October.

Q. And what date was that, do you remember?

A. I don't remember exactly the date. It must have been between the 13th and 14th.

Q. 13th and 14th?

A. Yes, of October.

Q. What year?

A. 1934.

Q. How many trips have you made since then?

A. How many trips did I make since?

Q. Yes.

A. I made three on the "Losmar", and about ten on the "Mangore", and two on the "Bethore".

Q. And you say that it was on the trip before this one that the lights went out, is that right?

A. No, sir, I didn't say that, I say—on the ship the lights went out.

[fol. 341] Q. While you were tied up in port?

A. No, sir, at sea, only time on the "Penmar", the lights went out. That has nothing to do with this.

Q. And you say that the lights went out on the trip before this one while the vessel was tied up in dry dock?

A. I don't say the lights went out, Mister, don't take the wrong way. I told you when they changed the power.

Q. Yes.

A. They are bound to go out.

Q. Yes.

A. Because, take the power off the ship and put shore power on.

Q. Yes.

A. They are bound to go out for about two minutes.

Q. Do they always do that?

A. When they go to the dry dock, always do that, always use shore power.

Q. Do the lights always do that?

A. Yes, sir, that is the only time I remember on the "Losmar" doing that.

Q. On the "Losmar"?

A. That is the only time I remember.

Q. And you wouldn't remember what date that was?

A. I tell you I believe it was the 15th or 16th of October, 1934.

Q. 1934?

A. That was in Baltimore, dry dock.

[fol. 342] Q. That happened in the same place, didn't it?

A. No, sir, Baltimore dry dock, Quay Highway, in Baltimore.

Q. This was in Sparrows Point, Baltimore?

A. Well, this is following trip, in Sparrows Point.

Q. What is that?

A. This is following trip, in Sparrows Point.

Q. Yes, I know, but the ship was tied up in the same place from the previous voyage, too, wasn't it?

A. Oh, no, sir. Oh, no. One is the Quay Highway, in Baltimore.

Q. You say it happened in Baltimore when they changed the power?

A. Yes, Baltimore, not Sparrows Point.

Q. In Sparrows Point?

A. No, in Baltimore.

Q. Baltimore?

A. Yes.

Q. That is near Sparrows Point, isn't it?

A. No, sir.

Q. How far away is it?

A. It is about sixteen miles by land.

Q. Sixty miles?

A. No, sixteen.

Q. Oh, sixteen.

Mr. Freedman: That is all.

[fol. 343] Deposition taken on behalf of the Respondent, pursuant to notice, at the office of Messrs. Lewis, Wolff and Gourlay, 208 South 4th Street, Philadelphia, July 15, 1936, at one P. M. Eastern Standard Time.

Present:

Freedman, Goldstein and Pechner, Esqs., by Abraham E. Freedman, Esq., and Ivan P. Pechner, Esq., for the Libellant.

Lewis, Wolff and Gourlay, Esqs., by Otto Wolff, Jr., Esq., for the Respondent.

Stipulation

It is agreed that the deposition of the witness shall be taken stenographically and reduced to typewriting; signing, sealing and certification be waived.

STEPHEN BOYD WHITMORE, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Wolff:

Q. Your residence, Mr. Whitmore, please?

A. 1187 Franklin Avenue, Sea Cliff, Long Island.

Q. Now, Mr. Whitmore, keep your voice up so the Stenographer can hear. Were you serving on the Steamship "Losmor" in February, 1935?

A. I was.

Q. As what?

[fol. 344] A. Third engineer.

Q. How long have you held an engineer's license?

A. Three years.

Q. In February, 1935, how long had you been serving on the "Losmar"?

A. Eight months.

Q. And are you still on the ship?

A. No, I am not.

Q. When did you leave?

A. August 15th, 1935.

Q. Did you know Charles W. Taylor, the libellant, in this case?

A. I did.

Q. When did you last see him?

A. When they took him off the ship in Panama.

Q. That was about when?

A. March; some time in March; I don't know the exact date.

Q. Of 1935?

A. Yes.

Q. Was it during the course of the voyage of the "Losmar" from Philadelphia to the west coast?

A. Yes.

Q. How did Mr. Taylor leave the ship?

A. He hobbled off the ship, walked off without any assistance.

Q. Had he at any time complained to you of any injury to his foot?

A. He told me about an infection of his foot.

[fol. 345] Mr. Freedman: That is objected to, and I move the answer be stricken from the record. I ask the witness to be responsive to the question.

By Mr. Wolff:

Q. When did he first mention the matter to you, and where?

Mr. Freedman: I object to that. He didn't say that he ever did mention it to him before, and I ask counsel to be more specific.

By Mr. Wolff:

Q. Answer the question, please.
A. He told me while on watch one time, and I referred him to the first assistant engineer.
Q. This was on board the "Losmar"?
A. Yes.
Q. And when?
A. It was between Philadelphia and Panama.
Q. You don't recall the date?
A. I don't.
Q. What did Mr. Taylor say to you?
A. He just told me he had an infection of his foot, and he asked my advice what to do about it.
Q. What did you say to him?

Mr. Freedman: That is objected to.
The Witness: I said he better ask the first assistant.

By Mr. Wolff:

Q. Did you see his foot?
A. No, I didn't.
Q. Did he tell you what had happened to his foot?
[fol. 346] A. No, he didn't.
Q. What you have just told us is the only conversation that you ever had with him?
A. It is.
Q. Where was the "Losmar" during the early part of February, 1935?
A. It was laid up in Sparrows Point, Maryland.
Q. For what purpose was she there?
A. For repairs between voyages.
Q. And was she being repaired?
A. They were working on the engines.

Q. Was she at any time in the drydock at the shipyard at Sparrows Point?

A. No, she wasn't in drydock.

Q. Do you recall whether on Saturday, February 9th, 1935, you were on watch or doing any work on the "Losmar"?

A. I was doing day work, not on watch.

Q. Were regular watches being stood while the ship was at Sparrows Point?

A. No.

Q. You say you were doing day work on Saturday, February 9, 1935?

A. Yes.

Q. When did you begin working?

A. At eight in the morning.

Q. When did you stop work on that day?

A. 4:30.

[fol. 347] Q. What were you doing?

A. I was overhauling a generator.

Q. More than one?

A. No, just one.

Q. How many generators have you on the "Losmar"?

A. Two.

Q. And where are they located?

A. They are located on the dynamo platform, which is on a level with the well deck.

Q. Where with reference to the engine room?

A. Just above the engine room.

Q. In what part of the ship is the engine room located?

A. Center part.

Q. The two generators to which you have referred serve what purpose?

A. To supply the electric current to the ship.

Q. Now, you say you were working on one of them on Saturday, February 9th, 1935?

A. Yes.

Q. How many generators does it take to supply current to the ship?

A. One.

Q. Had the generator on which you were working on February 9 been supplying current to the ship at any time during the course of that day?

Mr. Freedman: That's objected to.

The Witness: No.

[fol. 348] Mr. Wolff: On what ground?

Mr. Freedman: On the ground it is leading. You can ask him where the current came from.

By Mr. Wolff:

Q. Answer the question.

A. No.

Q. Was the other generator—that is, the one on which you were not working—in operation?

A. Yes.

Q. And was that generator—that is to say, the one on which you were not working supplying the current to the ship?

A. Yes.

Q. And did it supply current to the ship during the whole of that day, February 9, 1935?

A. Yes.

Q. Now, about what time did you begin to work on the generator on which you were engaged?

A. Since I started in the morning, eight o'clock.

Q. When did you finish doing any work on that generator?

A. At 2:45, approximately.

Q. In the afternoon?

A. In the afternoon.

Q. Had the generator on which you were working been in operation at any time during the course of the day, February 9th?

A. No.

Q. How are the generators on the "Losmar" operated?

A. By steam.

[fol. 349] Q. And the steam is supplied by the ship?

A. Yes.

Q. Have you any other way of operating the generators?

A. Yes, but compressed air.

Q. And when they are operated by compressed air, the air is furnished from what source?

A. From the dock.

Q. By whom on the dock?

A. The power plant down there.

Q. And where is the power plant located?

A. It is in one of the buildings at Sparrows Point.

Q. What buildings are you referring to? The shipyard?

A. The shipyard buildings.

Q. In other words, the shipyard furnishes the air, if air is used?

A. Yes.

Q. Now, in order to change from steam to air in the operation of a generator, what must you do?

A. You have to take—break a flange and insert a blank flange, and take off the bonnet of the exhaust valve.

Q. I want you to explain this, Mr. Whitmore, in some detail so the Court can understand exactly what is done. Begin over again and give us step by step, and tell us the various things to which you refer as you go along.

A. First, you have to shut off the auxiliary steam line, shutting down the generator, and you take and break a joint in that line, and allow the steam in the line to escape. Then you insert a blank flange in that joint. After that is [fol. 350] done, you take the bonnet off the exhaust valve to allow the exhaust air to escape, inserting a blank flange just above the valve, the exhaust valve.

Q. Then what do you do?

A. Then you can go back and turn the auxiliary steam on again. Then you have to connect an air hose to the dock to a line that is already connected to the auxiliary steam line, open the air valve, and the generator stops.

Q. Now, how many men does it usually take to perform this operation you have just described?

A. About four.

Q. How much time does it usually take?

A. Fifteen minutes if everything is in readiness.

Q. If what?

A. If everything is in readiness.

Q. And it takes four men, you say?

A. Yes.

Q. How many men does it take to connect up the air pressure hose with the generators?

A. Three men.

Q. Why does it take three men to connect up the air hose?

A. One to drop it over the side, and two to make sure the fitting is tight on the dock.

Q. Now, at any time on February 9th, 1935, was there any change from steam to air, or from air pressure to steam?

A. No.

Q. And you are sure of that, are you?

A. I am sure.

[fol. 351] Q. If there had been would you have known of it?

A. I would.

Mr. Wolff: Cross-examine.

Cross-examination.

By Mr. Freedman:

Q. Are you employed at the present time, Mr. Whitmore?

A. No, I am not.

Q. Do you expect to go back with the Calmar?

A. Not sure.

Q. Were you discharged from the Calmar?

A. No.

Q. What are you doing now?

A. Nothing.

Q. Have you made application to go back to the Calmar?

A. Yes.

Q. How long ago?

A. About three months ago.

Q. And you are waiting now to go back on board a vessel of the Calmar Steamship Corporation?

A. Yes.

Mr. Wolff: He said he didn't know.

Mr. Freedman: He answered yes.

By Mr. Freedman:

Q. Now, do you recall quite distinctly everything that you did on February 9th, 1935?

A. I do.

Q. You recall it quite distinctly?

A. Yes.

[fol. 352] Q. Despite the fact that it's over a year ago?

A. Yes.

Q. And what hours were you on duty on that day, do you remember?

A. From eight to four-thirty.

Q. In the afternoon?

A. In the afternoon from one to four-thirty.

Q. When you say from eight until four-thirty, you mean eight in the morning?

A. Eight in the morning to four-thirty in the afternoon.

Q. In the evening?

A. In the afternoon.

Q. Then you didn't go back to duty again after that day, did you?

A. No.

Q. In other words, you finished work at four-thirty?

A. Yes.

Q. You are sure it was four-thirty and not five o'clock, or later?

A. Four-thirty.

Q. You are sure it was that time?

A. Yes.

Q. Did you have a watch?

A. No, there was a clock in the engine room.

Q. You are sure you looked at the clock that day and saw it was four-thirty?

A. Yes.

Q. Where were you when Taylor was taken off the ship on March 12?

[fol. 353] A. I was in the engine room.

Q. When he was taken off the ship?

A. Yes.

Q. Did you see him?

A. No, I didn't.

Q. How do you know he hobbled off without any assistance?

A. From the way he went out of the engine room.

Q. You were asked on direct examination how Taylor went off the ship, and you said he hobbled off without any assistance; hobbled off the ship without any assistance. You didn't see him go off the ship, did you?

A. I saw him on his way off.

Q. Did you see him go off the ship?

A. Not over the side, no.

Q. You were down in the engine room at the time?

A. Yes.

Q. So, you don't know what happened on the dock, do you?

A. I can see from the engine room rail.

Q. You said a minute ago you didn't see him.

A. I said I saw him start over the side.

Q. You saw him start over the side from the engine room?

A. Yes.

Q. What part of the side did you see him start?

A. Where he walked up to the well deck.

Q. In what part of the engine room were you standing at the time?

A. Dynamo platform.

[fol. 354] Q. Why were you watching Taylor at the time?

A. Because they were having a commotion about it.

Q. And you saw him walk off without any assistance?

A. Sure.

Q. From the engine room?

A. I didn't see him put his foot on the ground, but he was pretty close to it.

Q. Did you see him walk down the gangplank?

A. Yes.

Q. From the engine room? You mean to tell me you can see the gangplank from the engine room?

A. The gangplanks at the Panama Canal are on wheels; they move them on wheels.

Q. You could see that gangplank from the engine room down below?

A. I could see that gangplank from the engine room, yes.

Q. About when did Taylor first complain to you about his foot?

A. About three days after we left Philadelphia.

Q. And you told him to go see the first assistant engineer, is that right?

A. Yes.

Q. Do you know whether he went to see the first assistant engineer?

A. No; I don't.

Q. Were you on Taylor's watch?

A. Yes, I was.

Q. Mr. Whitmore, do the vessels generally use shore current when they come into port for repairs when they lay up?

[fol. 355] A. No.

Q. Do they ever use it?

A. Once in a great while.

Q. Do you ever recall having known that it was used?

A. Once.

Q. Just once?

A. Yes.

Q. How many trips did you make on the "Losmar"?

A. Seven.

Q. Altogether?

A. Yes.

Q. Over a period of how long?

A. In a year and four months.

Q. And do you remember everything that took place during all of those trips?

A. Not everything.

Q. Do you remember what took place on February 11?

A. February 11th, yes.

Q. Do you recall what took place on February 12th?

A. Yes.

Q. Do you recall what took place on February 4th?

A. No.

Q. You don't recall what took place on February 4th?

Mr. Wolff: I object to the line of questioning as entirely too indefinite and vague, and ask it be made more specific.

By Mr. Freedman:

Q. You don't recall what took place on February 4th?

A. No.

[fol. 356] Mr. Wolff: Where?

Mr. Freedman: He knows what the question is, and he answered the question. Your objection is on the record, and the Court can rule on it.

Mr. Wolff: There is only one way of answering that question, and that is to make it more specific.

Mr. Freedman: He said he doesn't remember what happened on February 4th.

Mr. Wolff: Neither do you.

Mr. Freedman: That is your thought.

By Mr. Freedman:

Q. How long would it take to switch the current from one generator to another one if the lights went out——

Mr. Wolff: I object to that.

By Mr. Freedman:

Q. —on that vessel?

Mr. Wolff: I object to that question on the ground that it calls for an expression of opinion with respect to matters as to which there is no evidence.

By Mr. Freedman:

Q. Answer the question, now, please.

A. It depends on what condition the other generator is in.

Q. Well, you were working on one of the generators?

A. Yes.

Q. On that day?

A. Yes.

Q. Was it in good condition on that day?

A. I had it apart overhauling it.

[fol. 357] Q. And did you finish the job on that day?

A. I did not.

Q. Well, suppose it were in good condition and the other generator failed for some reason, how long would it take to switch it on?

Mr. Wolff: I object on the ground the questions calls for an opinion as to a matter with respect to which there is no evidence.

By Mr. Freedman:

Q. Now, please answer the question.

A. About two minutes.

Q. Now, you remember when the vessel first got into Colon on the trip from Philadelphia to the west coast?

A. The trip of February 9th?

Q. That is right.

A. No, I don't remember exactly.

Q. You don't remember the date when it got in, do you?

A. No.

Q. Were you on watch when it pulled into Colon?

A. I was.

Q. Did you notice a quarantine doctor come aboard?

A. Yes.

Q. And you don't remember the date?

A. No.

Q. Now, that generator that you were working on, were you working on it alone, or were you assisted by someone, or were you assisting anyone?

[fol. 358] A. I was assisted by Robert Jones, an oiler.

Q. Was the first or second engineer there at the time?

A. Off and on during the day he was.

Q. Did he ever make any attempt to assist you or engage in any conversation with you during the time you were working?

A. No.

Q. Never came over to see how you were doing?

A. He came over to see how I was doing, but he never made any attempt to help me.

Q. Now, just so we get it straight, do I understand you to say that they very seldom ever use any shore current or the compressed air from shore when they report down there laying up for repairs?

A. Very seldom.

Q. And you only remember that it happened once, is that right?

A. Just once.

Q. Do you know when that was? Was it after or before this trip?

A. It was before that trip.

Q. Was it the trip before?

A. Yes, I believe it was the trip before.

Q. Was it the trip before that one, two trips before?

A. No, it was the trip before.

Mr. Freedman: That is all.

Redirect examination.

By Mr. Wolff:

Q. Do I understand you to say that you did not finish your work on the generator that you were repairing on February 9th?

A. I did not.

[fol. 359] Q. What did you do on the 9th to the generator?

A. On the 9th I took the piston out, and the piston rod, and the piston rod packing box, and cross head, and oil attachment.

Q. And you had further work to do on it when you stopped work at 4:30 in the afternoon?

A. I did.

Q. When did you continue that work?

A. Monday, the 12th.

Q. The following Monday?

A. The following Monday.

Q. And did you reassemble the generator when you quit work on February 9th, at four-thirty?

A. No, I didn't.

Q. And at any time after you quit work at four-thirty on the afternoon of February 9th, was the generator on which you were working in condition to be used?

A. No, it was not.

Q. And you say you began taking it apart about the eight A. M. on the morning of February 9th?

A. I started the day before.

Q. You started the day before?

A. Yes.

Q. So, is it correct to say that at no time on February 9th, the generator on which you were working was in condition to be used?

Mr. Freedman: That is objected to.

By Mr. Wolff:

Q. Is that correct?

A. That is correct.

[fol. 360] Q. And was the other generator—that is to say, the one on which you were not working—the one which supplied the ship with current on February 9th, as well as the day before and the following days?

A. Yes.

Mr. Freedman: That's objected to.

By Mr. Wolff:

Q. And you have already said, I believe, that there was no switch from one generator to the other?

A. Yes.

Mr. Freedman: He has not said that. I object to the statement by counsel.

By Mr. Wolff:

Q. Mr. Whitmore, you have told us that with four men on the job it would take at least fifteen minutes to change from steam to air, did you?

A. Yes.

Q. Provided, I believe you said, that everything was in readiness?

A. Yes.

Q. What did you mean by that? What would have to be done?

Mr. Freedman: That is objected to, and I ask counsel to refrain from leading the witness.

By Mr. Wolff.

Q. What would be necessary in order to have everything in readiness?

Mr. Freedman: That is objected to. I object on the further ground the witness has testified under direct [fol. 361] examination, and this is not proper redirect examination.

By Mr. Wolff:

Q. Now, answer the question.

A. Well, all the tools that have to be in readiness—gaskets cut from blank flanges, blank flanges cut, and metal we were going to use, air hose ready to be attached, men at their positions to shut the various valves off as they were ordered.

Q. And all that would take about how long?

A. About an hour.

Q. And it would call for the services of about how many men?

A. Four men.

Q. Have you been assigned to duty on any ship owned and operated by the Calmar Steamship Corporation?

Mr. Freedman: That's objected to.

The Witness: No.

By Mr. Wolff:

Q. And you merely have on file with them an application for reemployment?

A. Yes.

Q. And has that application been acted on?

A. No.

Q. And you say you left the Steamship's employ of your own accord?

A. I did.

Mr. Wolff: That is all.

[fol. 362] Recross-examination.

By Mr. Freedman:

Q. Do you remember where you were on June 15th?

Mr. Wolff: I object.

By Mr. Freedman:

Q. Of this year.

Mr. Wolff: It is not proper recross.
The Witness: June 15 of this year?

By Mr. Freedman:

Q. Yes.
A. Yes.
Q. Where were you??
A. Sea Cliff, Long Island.
Q. Were you working?
A. No.

Mr. Freedman: I now make a formal objection to this deposition on the ground this witness was available for call at the trial of this case in open court and on the other occasions when testimony was taken in open court, and on the further ground that all these further depositions were to be taken only of going witnesses from the "Losmar" whose testimony couldn't have been previously taken.
Mr. Wolff: Well, is that all?
Mr. Freedman: No, it is not all.

By Mr. Freedman:

Q. Now, you are depending solely on your memory for all these statements you are making here, Mr. Whitmore?
A. Yes.
[fol. 363] Q. How many times would you say to the best of your recollection that you assisted in repairs of the "Losmar"?
A. As many times as it got repaired when I was on board.
Q. How many times would you say that would be?
A. Well, there is one repair period between each voyage. I was on seven voyages.
Q. You mean one on the west coast and one on the east coast?
A. No, just one on the east coast.
Q. Just one on the east coast; you were on seven voyages. Whom did you work for before you worked for the Calmar Steamship Corporation?

A. Grace Line.

Q. How long did you work for them?

A. Fourteen months.

Q. In what capacity did you work for them?

A. Oiler, firemen and water tender.

Q. Did you work as an engineer for any other company?

A. No, I didn't.

Q. Now, was there any other way you could supply current for this ship other than compressed air from the shore and other than the method they have on board the ship, itself?

A. No.

Q. Isn't it a fact that you can connect up—you can use the current from the shore by running a wire from the vessel over to the shore current?

A. That is what I took for granted when you said shore current.

[fol. 364] Q. You can do that, though, can't you?

A. Yes.

Q. In other words, you can connect up the lines from the vessel to the shore current merely by running a wire from the vessel over to the shore current; is that right?

A. Yes.

Q. That would only take how long?

A. That would take a couple of hours to get everything ready.

Q. What do you mean, "get everything ready?" You only need to connect it up to the devices on board the ship and to the shore current; it is just a question of plugging in or connecting your wires, isn't it?

A. Oh, no. You have to connect your wires to different switches; you have to have the wires around on the switches.

Q. How long did it actually take you to do the actual connecting?

A. Actual connecting?

Q. Yes.

A. About fifteen minutes, I guess.

Q. Did the vessel ever do that when it was laid up for repairs?

A. Not while I was on board.

Q. You never saw it done?

A. No.

Mr. Freedman: That is all.

Mr. Wolf: That is all.

[fol. 365] Depositions taken on behalf of the respondent pursuant to notice at the office of Messrs. Lewis, Wolff and Gourlay, Esqs., 208 South 4th Street, Philadelphia, Pa. on Thursday, September 10, 1936, at 2:30 o'clock P. M., Daylight Saving Time.

Present:

Freedman, Goldstein and Pechner, Esqs., by Abraham E. Freedman, Esq., and Ivan P. Pechner, Esquire, representing the Libellant.

Lewis, Wolff and Gourlay, Esqs., by Frederick W. Gourlay, Esq., and Duncan and Mount, Esqs., by F. A. Bull, Esq., representing the Respondent.

Stipulation

It is agreed that the depositions may be taken stenographically and thereafter reduced to typewriting and the signing, sealing and certification and filing thereof be waived.

Walter H. Evans, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. Mr. Evans, what is your address?

A. 1725 Sansom Street, Philadelphia, Pa.

Q. Mr. Evans, did you this year take any pictures on the steamship "Losmar"?

A. I did, sir.

[fol. 366] Q. And can you tell us where the "Losmar" was at that time?

A. I believe they call it Port Richmond, it is up here (indicating).

Q. It is in Philadelphia?

A. Yes, Port Richmond.

Q. On what date did you take those pictures?

A. On the seventh month seventh, 1936.

Q. That would be July 7th, 1936?

A. That is right.

Q. And where on the ship were they taken?

A. In the boiler room.

Q. And did you personally take the photographs?

A. I did.

Q. Did you develop them?

A. I did.

Q. Do you have the prints from those films?

A. I do, sir.

Q. How many did you take, and do you have?

A. Three.

Q. And what do they represent?

A. Well, there is photograph number 16802, that is looking forward from the—along the corridor or alleyway, or whatever you may call it, passageway, I have described it on the back, from the engine room to the boiler room between the boilers.

Mr. Bull: I would like to have that photograph marked and offer it as Photographic Exhibit 1.

Mr. Freedman: I object to the admission of the photograph.

[fol. 367] (The photograph referred to above was marked Photographic Exhibit 1.)

By Mr. Bull:

Q. Mr. Evans, is that your description that appears on the back of that photograph?

A. Yes, sir.

Q. Can you tell us which way that is looking on the ship, that is as to whether toward the bow or toward the stern?

A. Toward the bow, sir.

By Mr. Freedman:

Q. May I interrupt just a moment to ask Mr. Evans, are you familiar with the bow and the stern of a vessel or the other parts of a vessel?

A. Very familiar.

By Mr. Bull:

Q. You stated that that picture was of a passageway or area way going from the engine room to the boiler room going between two boilers. Can you state between which two boilers?

A. My recollection is there is three boilers. This is between——

Mr. Freedman: Just a minute, I want to object to any questioning on those lines on the ground that the photographs speak for themselves and if there is any identification it should be made on the photograph itself.

By Mr. Bull:

Q. Will you answer?
[fol. 368] A. This passage runs between the starboard boiler and the two which would—one which would be the center and the other on the port side.
Q. In other words, walking along the passageway you go between the starboard and center boiler?
A. That is right.
Q. Now, that photograph shows two steps. Are those steps leading from the passageway to the boiler room or do they go up——
A. They go up between the boiler room——

Mr. Freedman: I have not objected to any leading questions here. I don't want to clutter up the record, but please let the witness tell it as he sees it.
The Witness: My description of the steps would be that they are at the forward end of the passageway and at or very near the entrance to the boiler room.

By Mr. Bull:

Q. You say very near. Can you state how far it would be from the edge of the top step to the base of the boilers at the side?
A. I believe the top step to be coincident with the base of the boiler, the other step being inside of the line.
Q. That is in the back of the alleyway or passageway?
A. That is back in the alley.
Q. Now, will you show us another photograph which you have?
A. Well, in numerical order the next would be 16803.
[fol. 369] Q. And was that taken and developed and printed by you?
A. It was, sir.
Q. And is the description on the back yours?
A. It is, sir.

Q. And will you tell us where that was taken?

A. This is a picture in the boiler room looking from the port tide—toward the port side from the starboard side.

Q. And which boilers, if any, does it show?

A. It is taken in front of the starboard boiler and it shows the center and the port side boiler.

Mr. Bull: I will offer that as Photographic Exhibit 2.

Mr. Freedman: It is objected to.

(The photograph just referred to was marked Photographic Exhibit 2.)

By Mr. Bull:

Q. When was that photograph taken, Mr. Evans?

A. July 7, 1936.

Q. Does the entrance to the boiler room which is photographed on Photographic Exhibit number 1 show on that photograph which is Photographic Exhibit number 2?

A. Yes.

Q. And will you mark an "E" at the point?

(The witness placed an E on the photograph.)

By Mr. Bull:

Q. Was that photograph taken at the same time?

A. Yes, sir.

Q. Same day, at least?

A. Same day, practically the same time.

[fol. 370] Q. Now, that photograph has a man standing near the center of it, a little bit to the left. Do you remember who that man is?

Mr. Freedman: That is objected to.

The Witness: I don't recall his name.

By Mr. Bull:

Q. Do you know whether he was a member of the crew or an officer of the ship or anything?

Mr. Freedman: That is objected to.

The Witness: Can I answer?

By Mr. Bull:

Q. Yes.
A. He was one of the assistants.
Q. Assistant engineers?
A. Assistant engineers, yes.
Q. Do you know about how tall he is?

Mr. Freedman: That is objected to.
The Witness: About my height, about five feet eight inches.

By Mr. Bull:

Q. Can you state whether as he was standing when that photograph was taken his head was touching any part of any one of the boilers?
A. It was not.

Mr. Freedman: That is objected to.

By Mr. Bull:

Q. It was not?
A. No.
[fol. 371] Q. Can you state how far his head was from the boiler?
A. Two or three inch clearance.
Q. And what boiler is that directly behind him?
A. That is the center boiler.
Q. Do you know how far his right foot is in that photograph from the base of the center boiler?

Mr. Freedman: That is objected to.
The Witness: About eighteen inches.

By Mr. Bull:

Q. Do you have any other photograph?
A. Yes, sir.
Q. Was that taken the same day?
A. It was, sir.
Q. And where was that taken?
A. That was taken in the boiler room also. It is looking toward port side from the starboard side.

Mr. Bull: I will offer that as Photographic Exhibit number 3.

Mr. Freedman: That is objected to.

(The photograph referred to above was marked Photographic Exhibit number 3.)

By Mr. Bull:

Q. Do you recall about where you stood with your camera when that was taken?

A. About the center of the boiler room and just a little bit toward the starboard side of the entrance to the—between the boilers.

[fol. 372] Q. In other words would that be in front of the port side of the starboard boiler?

A. About, yes, sir.

Q. That doesn't show the entrance to the boiler room, does it?

A. No, sir.

Q. Does it show which two boilers? Does it show that?

A. The center and the starboard—or the port boiler, rather.

Q. That nearest to you on the left-hand side of the photograph is which?

A. Is the center.

Q. Do you recall what was over the top of this engine room here above the boilers?

A. I don't.

Q. I think I said the engine room at that time, I meant the boiler room shown in these photographs, what was up over it in the way of any gratings, laths, or metal or what?

Mr. Freedman: That is objected to.

The Witness: I don't recall anything of that part of it. I have an idea, but I don't recall now.

Mr. Bull: That is all.

Do you want to use these, Mr. Freedman?

(Photographs handed to Mr. Freedman.)

Mr. Freedman: I first want to move that the testimony of this witness be stricken out in its entirety upon the ground that the testimony was as to conditions over a year later than the accident.

[fol. 373] No questions.

Mr. Bull: With reference to that objection I want to point out that in the testimony taken on the same date that those photographs were taken which is July 7, 1936 the chief engineer, I believe it was, testified that there had been no changes whatsoever in the boiler room on the "Losmar" since February 9, 1935.

Mr. Freedman: I want to object to that statement of yours on the ground that I don't recall there having been any such testimony, but if there is you can certainly argue it in your brief.

Mr. Bull: I am merely putting it on the record so I can later give you the citation on that testimony.

By Mr. Bull:

Q. How long have you been engaged in the business of photography?

A. Thirty-one years.

Mr. Bull: That is all.

Harry Wenig, having been duly sworn, was examined and testified as follows:

Direct examination.

By Mr. Bull:

Q. Mr. Wenig, what is your business?

A. Assistant foreman, Electrical Department, Sparrow's Point Plant, Bethlehem Shipbuilding Corporation.

[fol. 374] Q. How long have you been so employed?

A. About twenty-two years.

Q. At the Sparrow Point plant?

A. The same plant. I have been there steady fourteen years, but off and on I have been there twenty-two years. I had left at several times at short intervals. I have been there steady fourteen years now.

Q. And what are your duties as assistant foreman in the electrical department at that plant?

A. Having charge of all electricity around the ships and the docks.

Q. Would you have charge of electric current and compressed air furnished to a ship that was in at the yard for repairs?

Mr. Freedman: Now, I object to that and I want to caution counsel now not to lead the witness.

By Mr. Bull:

Q. Will you answer the question?
A. Yes.
Q. Yes. Can you state whether or not the Bethlehem Shipbuilding Corporation furnished any. compressed air for the generators of the "Losmar" or any electric current from shore to the "Losmar" in February, 1935.

Mr. Freedman: That is objected to.
The Witness: They did not.

By Mr. Bull:

Q. Can you state whether or not the "S. S. Losmar" was in dry dock at the Sparrow's Point plant of the Bethlehem [fol. 375] Shipbuilding Corporation in February, 1935.

Mr. Freedman: I object to that.
The Witness: It was not.

By Mr. Bull:

Q. Are there two—how many ways are there that current could be furnished to a ship from shore at the Sparrow's Point plant of the Bethlehem Shipbuilding Corporation to a ship?

Mr. Freedman: I object to that as being totally irrelevant.
The Witness: There is one way, running temporary lines to the ship; there is another way of furnishing steam—you mean just from the dock?

By Mr. Bull:

Q. From the dock.
A. One way is furnished through current and the other way is compressed air.
Q. And how would the compressed air be handled?
A. They would have to—for a ship to get air at the docks it would have to have a requisition. Men from the yard would put air into the ship. We would connect the air to the ship.
Q. On to what of the ship?

Mr. Freedman: I object to that as totally irrelevant as to what they do on other occasions.
The Witness: That is to the steam pipes of the ship.

By Mr. Bull:

Q. Pipes on what, what on the ship?

[fol. 376] A. The steam lines, the steam line that runs to the generator.

Q. And in order to get the shipyard to furnished compressed air to the generator or electric current, what would be necessary?

A. The shore superintendent would have to turn the requisition into what they call the Report Department and the Report Department would have in turn to furnish us with a requisition.

Q. Would it have to go through you?

A. That would go through our office.

Mr. Freedman: The same objection.

By Mr. Bull:

Q. And was there any requisition for the "Losmar" in February, 1935?

A. Nothing on air or electricity.

Q. Do you know where the ship gets its electric current when it is not furnished from the shore?

A. They have generators in those vessels which hold the steam.

Q. And do you know where they get the steam?

A. From the boilers.

Q. That is their own boilers?

A. Their own boilers.

Mr. Bull: That is all.

Mr. Freedman: No questions.

Mr. Bull: All right. That is all today.

[fol. 377] Deposition taken on behalf of the respondent at the office of Messrs. Duncan & Mount, 27 William Street, New York City, September 11th, 1936.

Appearances:

Messrs. Lewis, Wolff & Gourlay, Messrs. Duncan & Mount (by F. A. Bull, Esq.) for the respondent.

Messrs. Freedman, Goldstein & Pechner (by Abraham E. Freedman, Esq.) for the libellant.

It is agreed that the deposition of the witness shall be taken stenographically and reduced to typewriting, and that reading, signing, sealing, certification and filing be waived.

Mr. Bull: This deposition is taken by agreement without serving of a formal notice, however, reserving to the libellant any other objections to the taking of the deposition.

Edwin A. Sommers, being duly sworn and examined as a witness for the respondent, testified as follows:

By Mr. Bull:

Q. Mr. Sommers, are you the Mr. Sommers who testified before in this case?

A. Yes.

Q. In the deposition of Mr. S. B. Whitmore which was taken at Philadelphia on July 15th, 1936, Mr. Whitmore testified on cross-examination that on February 9th, 1935, [fol. 378] he was assisted by Robert Jones, oiler—that appears at page 19 of Mr. Whitmore's testimony. Mr. Sommers, is Robert Jones in the employ of Calmar Steamship Corporation now?

A. No.

Q. Do you know where he is?

A. I do not.

Q. Have you made any attempt to find him?

A. Yes.

Q. When did you first make such an attempt?

A. On July 17th, 1936.

Q. And will you tell us what you did?

A. I addressed a letter to Mr. Robert Jones at his last known address and sent a carbon copy of the letter to our Sparrows Point and Philadelphia offices with a request that they endeavor to ascertain the present whereabouts of Robert Jones.

Q. What was your purpose in writing to Jones?

A. To request him to get in touch with us.

Q. Did he get in touch with you?

A. He did not.

Q. Did you receive any reply to the letter to him?

A. I did not.

Q. What did you ask of your Sparrows Point and Philadelphia offices?

Mr. Freedman: That is objected to.

A. I asked them if they could advise the present whereabouts of Jones or if they had any information concerning him.

Q. Did they report to you about the matter?

Mr. Freedman: That is objected to.

[fol. 379] A. Yes.

Q. What did they report to you?

Mr. Freedman: That is objected to.

A. Under date of July 20th the Sparrows Point office advised——

Mr. Freedman: My objection covers this.

A. (Continuing.) reported that neither the Shipping Commissioner at Baltimore nor they themselves had any record of Jones' present whereabouts; also on July 21st our Philadelphia office advised that they had taken it up with the Shipping Commissioner, the Seamen's Institute, the Marine Firemen and Oilers Union—all in Philadelphia —and they had no record of his whereabouts at that time.

Q. Did you do anything else?

A. Yes.

Q. What?

A. Under date of August 26th I again wrote to our Sparrows Point and Philadelphia offices and asked if they had been able to develope any information in connection with Jones' whereabouts.

Mr. Freedman: Same objection.

Q. Did they report to you after that?

A. Yes.

Q. And what did they report to you?

Mr. Freedman: Same objection.

A. Under date of August 29th our Sparrows Point office reported that they had again taken it up with the Shipping Commissioner at Baltimore and that he still had no record [fol. 380] of Robert Jones; under date of August 29th our Philadelphia office advised that they had again taken it up with the Marine Firemen and Watertenders Union, the United States Shipping Commissioner and the Seamen's Institute all in Philadelphia and they all advised they had no record of Jones' present whereabouts.

Q. Have you been able to locate Jones or ascertain where he may be?

A. I have not.

Q. Have you ever up to this date had any reply to your request to him to get in touch with you?

A. No sir.

Cross-examination.

By Mr. Freedman:

Q. What was the address that you wrote to when you say his last known address, Mr. Sommers?

A. Dunn, North Carolina.

Q. How long had this man been in your employ prior to the time he left your employ?

A. I don't know.

Q. Do you have any idea, Mr. Sommers?

A. I haven't the slightest idea.

Q. And you confined your inquiries to Baltimore, Philadelphia and New York, is that right?

A. That is right.

Mr. Bull: And to his last known address.

Q. Yes, I mean just at the last known address, Baltimore, Philadelphia and New York?

A. Yes.

[fol. 381] Q. Your inquiries were confined solely to letters on your part, is that right, Mr. Sommers?

A. That is right.

Q. Do you know of your own knowledge whether any effort was made by anyone else to actually attempt to locate this oiler—of your own knowledge?

A. No.

Mr. Freedman: I want to at this time object to all testimony as to what had been done or what activity took place by anyone else other than the witness, and move that it be stricken from the record.

Q. Did you write to Galveston?

A. No.

Q. Did you write to Mobile?

A. No.

Q. Did you write to San Francisco?

A. No.

Q. Did you write to Seattle?

A. No.

Q. Did you write to Pedro?

A. No.

Q. In other words you did not write to anywhere on the West Coast?

A. That is right.

Q. This man had been shipping East and West Coast, isn't that a fact?

A. I don't know.

[fol. 382] Q. Well, your ships go from the East Coast to the West Coast, don't they?

A. That is right.

Q. You know it is quite possible that this man might have been on the West Coast as well as on the East Coast, isn't that right?

A. Possible.

Q. As a matter of fact, you know it is not only possible but it is probable?

A. I wouldn't say it is.

Q. Do you have the record of this man—of his service to your Company?

A. I haven't it here at any rate.

Q. Did you look it up before?

A. I looked it up on the crew list of this particular voyage.

Q. Just the one voyage?

A. That is right.

Q. And you didn't look up any prior voyages that he might have made to see if he had ever shipped with your Company before?

A. No.

Q. And you did not go into the man's history any further than just that one voyage?

A. That is all.

Q. Do you know whether he has been in your employ since that voyage?

A. I do not.

Q. You don't know?

[fol. 383] A. I don't know.

Q. Did you write to the Shipping Commissioner yourself?

A. No.

Q. Did you write to any one of the Unions yourself?

A. No.

Q. Did you send anyone to any of the Unions or to the Shipping Commissioner?

A. No.

Redirect examination.

By Mr. Bull:

Q. Did you know before July 15th, 1936 that Robert Jones was on the steamer on February 9th, 1935?

Mr. Freedman: That is objected to.

A. No.

Q. Has he been employed by your company since July 15th, 1936?

A. No.

[fol. 384] Depositions taken pursuant to notice, on behalf of the respondent, at the office of Messrs. Duncan & Mount, 27 William Street, New York City, July 9, 1936.

Appearances:

Messrs. Lewis, Wolff & Gourlay, Messrs. Duncan & Mount (Mr. Bull) for the respondent.

Messrs. Freedman, Goldstein & Pechner (Mr. Freedman and Mr. Pechner) for the libellant.

It is agreed by and between counsel for the respective parties that these depositions may be taken stenographically and thereafter reduced to typewriting, and that signing, filing and certification, be waived.

Mr. Freedman: I want to make a formal objection to the taking of these depositions, on the ground that all further depositions were supposed to have been taken only of going witnesses from the SS "Losmar", and all other depositions should have been taken in open Court at the time of trial. No objection, however, from the standpoint of notice.

Henry J. Baron, being duly sworn and examined as a witness for the respondent, testified as follows:

By Mr. Bull:

Q. Mr. Baron, what is your business?

A. Claim Investigator.

[fol. 385] Q. With whom?

A. Calmar Steamship Corporation.

Q. How long have you been with the Calmar Steamship Corporation in that capacity?

A. Four years.

Q. Do you remember the libellant in this case, Charles W. Taylor?

A. I do.

Q. When was the first that you recall seeing Taylor?

A. At the Marine Hospital at Ellis Island.

Q. About when?

A. About the latter part of May.

Q. Of what year?

A. 1935—1936.

Q. Will you tell us the circumstances under which you went to see him.

A. We received a call from Mrs. Logan, a Social Service Worker.

Q. Where?

A. At the Marine Hospital, Ellis Island.

Q. What was the nature of her call—what did she say?

Mr. Freedman: Objected to.

A. She said Mr. Taylor would like to see somebody from the office.

Q. Was it in response to her call that you went over to the hospital to see him?

[fol. 386] A. I had intentions of seeing him anyhow.

Q. Did you discuss the matter with him at that time?

A. In a general way I did.

Q. What was the discussion?

A. I asked him to tell me a brief history of what happened.

Q. And what did he say?

A. He said he did not know, he could not tell me how it happened.

Q. Did he say why he wanted you to go over there?

Mr. Freedman: Objected to.

A. Yes.

Q. And what was that—what did he tell you?

A. His main reason was that he had no money, and he wanted some money for cigarettes.

Q. And what did you do about that?

A. I provided him with a carton of cigarettes.

Q. Did you have any more discussion with him at that time?

A. I talked to him about his leg and how he got this infection, and he couldn't give me any cause for it.

Q. Did he tell you whether or not he knew or suspected any cause?

A. He could give me no reason.

Q. What did he say to you in that regard, as near as you can remember, what were his words?

A. He said he never had anything the matter with him before and he did not know how this thing happened to him.

[fol. 387] Q. Did you see him again after that?

A. Yes, I did.

Q. Do you know about how many times and over what period of time?

A. Well, all the while he was at the Ellis Island Hospital I would see him once a week.

Q. Did you see him after that?

A. I saw him after that.

Q. Where?

A. At the Staten Island Marine Hospital.

Q. That is at Stapleton?

A. Stapleton.

Q. How often did you see him while he was at Stapleton?

A. Once a week.

Q. Did you see him after he left Stapleton?

A. Yes, I did.

Q. Where did you see him then?

A. At the office when he would make us a call.

Q. You mean at the Company's office?

A. At the Company's office, 25 Broadway.

Q. How often would he make a call there?

A. Periods of two weeks.

Q. You mean about every two weeks he would come down?

A. About every two weeks.

Q. How long a period would you say it was, about, from the time you first saw him until you last saw him?

A. I saw him between thirty and thirty-five times.

[fol. 388] Q. Would you say about once a week or once every two weeks during that period?

A. On the average of once a week.

Q. Do you remember when, about, was the last time you saw him?

A. Yes, in the office the latter part of September or beginning of October, the last time he was in the office.

Q. Can you refresh your recollection as to when you saw him last?

A. (Referring to papers.) The last time I saw him was on March 10, 1936.

Q. Will you refresh your recollection as to the first time you saw him.

A. (Referring to papers.) About May 28th, I think it was, 1935.

Q. 1935?

A. Yes.

Q. And from around May 28th or the latter part of May 1935, until sometime in March 1936, you saw him, did you say, quite regularly?

A. Regularly I saw him.

Q. Where was this last time you saw him?

A. This was at the office—the Company's office.

Q. And when you saw him on these different occasions, did you discuss his foot trouble?

A. Only as to his general welfare, that his foot was coming along nicely.

Q. Did you discuss with him how or where he got the foot trouble or infection?

[fol. 389] A. Only the first three or four visits that I made.

Q. And on those visits, did he tell you anything more about it than he did on the first one?

A. He did not.

Q. Did you ever ask Taylor to make any statement to you about his foot?

A. Yes, I did.

Q. Do you recall any statement that he did make to you about it and when he made it?

A. Yes.

Q. I will tell you that you can refresh your recollection in any way that you want to, and I will ask you what he did tell you when you asked him about the cause of the infection.

A. I asked him what caused it and he couldn't give me any——

Q. It isn't what he could or couldn't do—what did he do?

A. He said on the voyage from Baltimore to Philadelphia he first noticed a little sore on the inside of his little toe, the size of a match head, was the first symptoms that he knew.

Q. Did you ask him what caused that little sore that he spoke about?

A. Yes, I did.

Q. What did he say?

A. He said he did not know.

Q. Did you ask him if he had any ideas about how he got it?

Mr. Freedman: Objected to.

A. Yes, I did.

Q. And what did he say?

[fol. 390] A. Why, he said it might have been caused by what he called athletic feet, from taking a bath, might have been a tropical germ that he contracted somewhere—he wasn't quite definite himself, he did not know. He said, "I had good shoes on all the time", and he showed me the shoes and showed me his socks, "I had good socks on all the while".

Q. Did he suggest any other possible way that he might have got it?

A. No, he didn't.

Q. Did he ever tell you that while he was on the Losmar at Baltimore in February 1935, he had injured his right foot or any of the toes of his right foot?

A. Never mentioned anything about injury.

Q. Did you ask him at any time to sign a statement?

A. I did, with his—if he was willing to. I didn't force him, I simply——

Q. Did he say whether or not he was willing to?

A. He didn't—he said he would not sign any statement.

Q. On the visits that you paid to him at the Ellis Island Hospital and at the hospital at Stapleton, did you see any indications of his being under the influence of dope?

Mr. Freedman: Objected to.

A. No.

Q. Did he discuss things with you freely, or did you do all the talking?

A. He discussed it with me freely.

[fol. 391] Q. How would you describe his conversations with respect to whether or not they were rational or irrational?

Mr. Freedman: Objected to.

A. He was very rational.

Q. At all times?

A. At all times that I saw him.

Q. Did he ever object to discussing the matter with you?

A. Not at all, no.

Q. Did he ever make any complaints to you about your visits or any questions you asked of him?

A. He made no complaints about my visits. He made complaints of other things but not about my visits.

Mr. Freedman: I move that the unresponsive part of the answer be stricken from the record.

Mr. Bull: Which part do you call unresponsive?

Mr. Freedman: Those other things. You asked him in your question if he made any objections to his visits.

The Witness: No.

Q. Did he make any objections to you about anything?

A. No.

Q. How many times, about, did you see him at the office of the respondent Company, Calmar Steamship Corporation?

A. I should say about at least a dozen times.

Q. Was he still an in-patient at any Marine Hospital at those times?

A. No, he was an out-patient at that time.

[fol. 392] Q. Did he come to the office himself alone?

A. The first time he came down with his sister-in-law.

Q. How about the other times?

A. The other times he came down alone.

Q. And at those times, did he appear to be under the influence of any kind of dope?

Mr. Freedman: Objected to.

A. No.

Q. Did he on any of those times ever tell you or intimate to you that he had had any accident on the Losmar?

A. No.

Q. On those visits that you made to him, and the visits that he made you at the office, did he ask you for anything?

A. There were times where I would pay him $14 a week, and he would request that he be given a further week's allowance—two weeks in advance.

Q. Did you make payments to him?

A. Yes, I did.

Q. Each time that you saw him?

A. Yes.

Q. I show you what has been marked in evidence as Respondent's Exhibit 1, which is a number of papers which purport to be receipts signed by Taylor, and ask you if those are receipts given for the payments which you refer to?

A. They are.

Q. Did Taylor, in any of the talks you had with him, tell you whether or not he had received any treatment on the Losmar?

[fol. 393] A. He said when he first noticed this little sore, the mate gave him some salve to put on the sore, that is about the only treatment he——

Q. Did he tell you when or about when that was?

A. On his trip from Baltimore to Philadelphia.

Q. Now, just to correct one thing: You testified one place here that you first saw Taylor in the latter part of May 1936, and another time you said the latter part of May 1935 that you first saw him. Which is correct?

A. 1935 that should be.

Q. Mr. Baron, when was the first time that you ever heard that Taylor claimed to have had an accident on the Losmar by stubbing his toe on some retarders?

Mr. Freedman: Objected to.

A. When I read the letter that we received from Freedman's office.

Q. That is Freedman, Goldstein & Pechner?

A. Freedman, Goldstein & Pechner, that is right.

Q. Do you have that letter here so that you can tell us the date of it?

A. Yes, the letter dated March 18, 1936.

Cross-examination.

By Mr. Freedman:

Q. You are employed by the Calmar Steamship Corporation at the present time?

A. Yes.

[fol. 394] Q. In the same capacity?

A. Yes.

Q. Where did you work before you worked for the Calmar Steamship Corporation?

A. Moore & McCormack.

Q. In the same capacity?

A. In the same capacity.

Q. Who is your superior officer, Mr. Baron?

A. Mr. E. A. Sommers.

Q. Do you get your instructions from him?

A. Yes.

Q. Before you go out to see anyone, do you get the authority from Mr. Sommers?

A. I do.

Q. Were you instructed by Mr. Sommers to go to see Taylor at the hospital?

A. Yes.

Q. Were you instructed by Mr. Sommers to get a statement from him?

A. I was instructed to get all the facts relative to the matter.

Q. And to get a statement from him?

A. Not necessarily a statement—just the facts.

Q. Weren't you supposed to get a statement from him?

A. You mean a signed statement?

Q. Yes.

A. No.

[fol. 395] Q. Why did you ask him to sign it then?

A. On the third or fourth visit I made over there, I wanted to get a signed statement from Mr. Taylor in order to complete my records.

Q. You mean on your own behalf—you are not supposed to get a signed statement, you only did it because you thought it might be right?

A. On the third or fourth visit I made over there, I received instructions from Mr. Sommers to get a signed statement if possible.

Q. You say you gave money to Taylor every time you went to the hospital?

A. Yes.

Q. That was about once a week?

A. About once a week.

Q. Did you make the memorandums on the slips each time you made a payment?

A. On the receipts?

Q. On the receipts.

A. Yes, I would write up the receipt.

Q. And you would state what the payment was on account of?

A. Yes.

Q. You did that with the authority of Mr. Sommers?

A. Yes.

Q. You say Taylor spoke to you quite freely?

A. He did, yes.

Q. Then why couldn't you get him to sign a statement?

Mr. Bull: I object to that, asking him to read another man's mind.

[fol. 396] A. Why, he didn't feel like signing a statement because he didn't know what the cause of his trouble was.

Q. You mean he said he couldn't tell you what the cause of the trouble was, is that right?

A. Yes—he did not know, that is the way he put it.

Q. Isn't it a fact he said he couldn't tell you?

A. No, he said he did not know.

Q. Then that shouldn't be any reason for not signing a statement to that effect, should it—you said he spoke freely before?

A. Yes, he did.

Q. If he said he didn't know what caused it, why shouldn't he sign a statement to that effect?

Mr. Bull: Objected to.

A. I don't know, he didn't feel like signing any statement, he said to me.

Q. He took the money?

A. Yes.

Q. And he signed receipts for that?

A. Yes, he signed receipts for that.

Q. But he wouldn't sign any statement you asked him to make?

A. No.

Q. When you saw him in the office, you again asked him how it happened, did you?

A. No, not then.

Q. At no time?

A. No.

[fol. 397] Q. You mean you never asked him how it happened at any of the times he called to see you at the office of the Calmar Steamship Corporation?

A. That is right.

Q. You never asked him?

A. No.

Q. You are sure about that?

A. Yes.

Q. You never asked him to sign a statement there either, did you?

A. Oh no.

Q. How much time would you spend with him whenever you saw him at the hospital?

A. Why, I would spend about three-quarters of an hour.

Q. You would give him his money—or your money?

A. Yes.

Q. And spend about three-quarters of an hour chatting with him?

A. Yes, just a social chat with him.

Q. Isn't it a fact that Taylor refused to sign a statement every time you or anyone asked him, that you know of?

A. Just this particular time, just the once that I went over.

Q. And that was the only time you ever asked him to?

A. That was the only time.

Q. Why did you visit him so frequently at the hospital?

A. Why, to pay a social call on him, to see that he was being taken care of and to show that the Company was looking after his interests.

[fol. 398] Q. What did you say your capacity was?

A. Claim Investigator.

Q. Did I understand you correctly to say that he stated to you that he received treatment on the Losmar from the mate on the voyage from Baltimore to Philadelphia?

A. He got some medicine from the mate, I forget just what it was.

Q. Whatever it was, you are sure about that, aren't you?

A. Yes.

Q. No question about it at all in your mind?

A. Yes, that is what he told me.

Redirect examination.

By Mr. Bull:

Q. Mr. Baron, when you say that Taylor said he would not sign a statement, did he say that he would not sign a particular statement or would not sign any statement?

A. He said he would not sign any statement.

E. A. Sommers, being duly sworn and examined as a witness for the respondent, testified as follows:

By Mr. Bull:

Q. Mr. Sommers, are you with Calmar Steamship Corporation?

A. Yes.

Q. In what capacity?

A. In charge of Insurance and Claims.

[fol. 399] Q. Do you remember the libellant in this case, Charles W. Taylor?

A. I do.

Q. When, as near as you can remember, did you first see Taylor?

A. August 22, 1935.

Q. Where was that?

A. In the Marine Hospital, Staten Island.

Q. Did you go over there to see him or were you over on some other purpose?

A. Went over to see him.

Q. How long were you with him?

A. I should say about an hour and a half.

Q. Did you talk with him at that time?

A. Yes.

Q. For all that period?

A. Not entirely.

Q. About how long did you talk with Taylor and he talk with you?

A. Possibly an hour.

Q. What did you discuss at that time?

A. Well, we discussed his condition—the condition of his foot—and during the conversation I asked him how he thought the condition had been caused.

Q. And what did he say?

A. He said he didn't know, had no means of knowing. He gave it as his idea that it might have been caused by possible infection due to hot oil or possibly in the toilets or bathroom of the seamen's quarters.

[fol. 400] Mr. Freedman: I object to that.

Q. Did he refer to it in any way other than as an infection?

A. No.

Q. Did he talk himself much of that time?

A. Yes.

Q. State whether or not he talked freely or was reticent?

A. Absolutely freely.

Q. Was his talk rational or irrational?

Mr. Freedman: Objected to.

A. Rational.

Q. Did he say anything to you about ever having had any accident on the steamship Losmar?

A. He did not.

Q. During this time, did you discuss anything else with him—have any other discussions?

A. Well, we had a general conversation about quite a good many things, the visit was more or less social.

Q. I mean referring to his infection, his trouble with his foot.

Mr. Freedman: Objected to. I must caution you now to refrain from leading the witness.

A. Well, we discussed that generally. He was telling me his experiences in the hospital and a previous operation that he had. He showed me his foot at that time. Of course that subject was uppermost in his mind and I guess a good part of the time was spent in discussing his condition.

[fol. 401] Mr. Freedman: When you say previous operation, you mean an operation to his small toe?

The Witness: Yes, when I saw it he had four of his toes off—all but his big toe.

Q. Did he say anything to you about any of Mr. Baron's visits to him?

Mr. Freedman: Objected to.

A. I don't recall specifically.

Q. Did you see him after that visit?

A. Yes.

Q. About how many times?

A. Oh, I suppose it was fifteen or twenty.

Q. The first visit was at Stapleton, was it, Marine Hospital?

A. Where I saw him first, yes.

Q. How many more times did you see him at Stapleton Marine Hospital, do you know?

A. Yes, one other time.

Q. And the rest of the times you refer to were where?

A. In the office.

Q. That is the Calmar Steamship Corporation's office?

A. Yes.

Q. On the second visit that you made, while he was at the Stapleton Marine Hospital, do you recall? about when that was? You can refresh your recollection in any way you want.

A. I would say it was (referring to papers)——

Mr. Freedman: Is that your own correspondence, Mr. Sommers?

[fol. 402] The Witness: My own memorandum.

A. (Continuing.) Do you want the exact date?

Q. Well, approximately.

A. It was about a week or so after I first saw him.

Q. Do you recall about how long you visited with him that time—only approximate?

A. I think I saw him for about ten minutes that time.

Q. And what did you discuss with him at that time?

A. The fact that the doctors had about decided to amputate his leg.

Q. Did he talk with you at that time?

A. Yes.

Q. How would you say he talked?

A. He was rational.

Q. Did he appear—give any evidence of being under the influence of dope?

Mr. Freedman: Objected to.

A. No.

Q. Did he give any such appearance on your first visit with him?

Mr. Freedman: Objected to.

A. No.

Q. Did you pay anything to Taylor on your visits?

A. (Referring to receipts.) Yes.

Q. Did he receipt for it?

A. Yes.

[fol. 403] Q. Are the receipts included in those which have been marked as Respondent's Exhibit 1?

A. Yes.

Q. Did you make any arrangements for any other examination or treatment of Taylor?

A. Yes.

Q. What arrangements did you make?

A. I first discussed his condition with the doctors at the Marine Hospital, and Taylor himself had been urging—or had suggested—that we ought to have an outside physician. As I say, I discussed the matter with the doctors in the Marine Hospital, and they were not only willing that such would be the case, but they apparently welcomed it. I then conferred with Dr. D. S. Spaulding, so that I could get his advice with respect to a competent physician for that particular type of disease, and he informed me that he had had considerable experience in the disease——

Mr. Freedman: I object and move to strike that from the record.

A. (Continuing.) and I accordingly requested him to make the examination and confer with the doctors at the Marine Hospital.

Q. Do you know whether or not Dr. Spaulding did make the examination?

A. I do.

Q. Well, did he?

A. He did.

[fol. 404] Q. At the time you arranged for Dr. Spaulding to go to the hospital and examine Taylor, had you been informed what was the matter with Taylor's foot?

Mr. Freedman: Objected to.

A. The doctors at the Marine Hospital gave it to me as their opinion that it was Buergers disease.

Q. At the time that you testified you saw Taylor at the Company's office, do you know whether he was an in-patient at any Marine Hospital?

A. He was not.

Q. Did he come to the office by himself?

A. Once or twice he came with his sister-in-law. I believe the first time he was there, after he came out of the hospital, his sister-in-law came down with him.

Q. And the other times, did anybody come with him?

A. I think once—one other time his sister-in-law came with him.

Q. At any other time besides those two, did anybody come with him?

A. No.

Q. Did you see him all the times he came to the office, or most of them?

A. I saw him most of the times.

Q. When was the last time you saw him?

A. (Referring to receipts) March 10, 1936.

Q. Was a payment made to him then?

A. Yes.

[fol. 405] Q. Did he ever come back to the office after that?

A. No.

Q. What was the next you ever heard of or from Mr. Taylor?

A. Received a letter from Messrs. Freedman, Goldstein & Pechner.

Q. And when was that?

A. (Referring to file.) The letter was dated March 14, 1936.

Q. What was the letter?

Mr. Freedman: Objected to.

A. It simply informed us that Messrs. Freedman, Goldstein & Pechner had been retained by Mr. Charles W. Taylor.

Q. Will you let me have that letter, Mr. Sommers?

(Witness produces same.)

Q. Is this the letter which you refer to?

A. Yes.

Mr. Bull: I offer the letter in evidence.

Mr. Freedman: Objected to.

It is marked Respondent's Exhibit A (Sommers).

Q. I note that this letter states that Messrs. Freedman, Goldstein & Pechner represent Mr. Charles W. Taylor relative to his claim for personal injuries which he received on board the SS. Losmar on February 11, 1935. Had you ever been informed by Taylor or anyone else that he had sustained any personal injuries on the Losmar on February 11, 1935?

Mr. Freedman: Objected to.

A. No.
[fol. 406] Q. Had you ever been informed by Taylor or anyone else that he had received personal injuries on the Losmar at any time?

Mr. Freedman: Objected to.

A. No. After receipt of that letter.
Q. Before the receipt of this letter.
A. The answer is no.
Q. When Taylor came to the office on different occasions, after he was discharged as an in-patient at the Marine Hospital at Stapleton, Staten Island, did you speak with him?
A. Yes.
Q. Did he talk himself?
A. Yes.
Q. During that time, did you notice anything in particular about the way he talked, or his general demeanor?

Mr. Freedman: Objected to.

A. Nothing unusual.
Q. Did he mention or intimate that he had received any personal injuries on the Losmar at any time?

Mr. Freedman: Objected to.

A. No.
Q. This letter, Respondent's Exhibit A (Sommers), states, "I will be pleased to call at your office Tuesday, March 17th, for a discussion of this matter", and it is signed by Mr. Freedman. Did Mr. Freedman call at your office on March 17th?

Mr. Freedman: Objected to.

A. No.
Q. Did anybody from Mr. Freedman's firm call at your office?
A. Mr. Pechner.
[fol. 407] Q. Do you recall the date he did call?

A. March 17th.
Q. Did you discuss the case with him then?

Mr. Freedman: Objected to.

A. Yes.
Q. Did he tell you the nature of the personal injuries that were being claimed.

Mr. Freedman: Objected to.

A. He didn't seem to be very sure, but he did tell me that—may I refresh my memory from my memorandum?
Q. Yes.
A. (Referring to papers.) Mr. Pechner reading from his files, informed me that his client claimed to have stubbed his toe or his foot against some retorters, he also advised him that the extension light had gone out.
Q. Is that all?
A. That is all with respect to the injury.
Q. In any of your discussions with Taylor, had he mentioned stubbing his toe at any time?

Mr. Freedman: Objected to.

A. No.
Q. Had he mentioned anything about lights going out?

Mr. Freedman: Objected to.

A. No.
Q. Did you ever see Taylor after the last payment you said you made to him, I think you said in March—I think you said March 10th.
A. No.
[fol. 408] Q. At that time, did you expect to see him again?
A. Yes.
Q. During the time that he was coming to the office, did he tell you where he was living?
A. Yes.
Q. Where?
A. (Referring to papers.) Third Avenue, in the Bronx.
Q. Did you ever ask Taylor to sign a statement?
A. No.
Q. Did you ever ask Mr. Baron to get a signed statement from Taylor?

Mr. Freedman: Objected to.

A. Yes.
Q. The second time you saw Taylor, was that before Dr. Spaulding saw him—or after?
A. Yes.
Q. Before?
A. Yes.
Q. Do you know about how long before?
A. About three or four days.
Q. Did you discuss the matter with Taylor at that time?
A. Yes.
Q. Do you recall what Taylor said about being examined by Dr. Spaulding?

Mr. Freedman: Objected to.

A. Yes, he was willing, and in fact welcomed it. As I say it was at his wish that it was first brought up.
Q. You mean he had expressed such a wish?
A. Yes.

[fol. 409] Cross-examination.

By Mr. Freedman:

Q. How long have you been with the Calmar Steamship Corporation, Mr. Sommers?
A. Eight years.
Q. How long have you been in your present capacity?
A. Six years.
Q. As what did you start with the Calmar Steamship Corporation?
A. Operating Manager.
Q. Do you generally go to visit men who are injured in the hospital, in the employ of your company, Mr. Sommers?
A. I do occasionally.
Q. Do you make a practice of it?
A. Well, usually Mr. Baron does the visiting, and in the case of a serious injury or something of that sort, I might drop out to see the man.
Q. You evidently considered this one serious enough to spend an hour and a half with him on your first visit in the hospital, is that right?
A. The man's condition was serious, no doubt of that.

Q. Was he in pain when you saw him?

A. No, I don't think so.

Q. Did he tell you why he wanted an outside physician?

A. I believe his idea was that he wanted to get another opinion on his condition—on his case.

Q. Isn't it a fact that he said he wanted someone to stop the pain, that they weren't doing anything for him there in the hospital—couldn't stop the pain—he wanted someone else to see if they couldn't help him out?

[fol. 410] A. He may have said he wanted someone else to help him out, he was quite naturally worried about his condition, and he did tell me that he had pain at times.

Q. The only indication that he would have would be pain, isn't that a fact?

A. Yes.

Q. So the fact that he asked for another specialist must have indicated that he had considerable pain, isn't that so?

Mr. Bull: I object to that as too speculative.

A. I don't think so, necessarily.

Q. Didn't you promise him, either in the hospital or on one of the occasions that he came to see you in the office, a life-time job as soon as he was able to take it?

A. No sir.

Q. Did you promise him any employment whatever?

A. No sir.

Q. Did you make any inducements to him?

A. No sir.

Q. What was the general trend of your conversation when he came to see you at the office?

A. Mr. Taylor was quite worried about how he would get on in life after he was finished in the hospitals and so forth, and I offered to endeavor to find him a job, and I did try very hard to locate him a job, and was doing so at the time I last saw him.

Q. With the Company?

A. With the Company or outside. I inquired outside among my friends and so forth.

[fol. 411] Q. Didn't you tell him you were going to get him a job?

A. No, I didn't tell him definitely because I didn't know if I could.

Q. Didn't you promise a settlement too as soon as everything was in readiness?

A. I did.

Q. You also paid him money when you went to see him, did you not, Mr. Sommers?

A. Yes.

Q. Did you give him any money in the office?

A. I believe I did. Between Mr. Baron and myself we paid him the money in the office.

Q. Isn't it a fact that you did try to get a statement from him, Mr. Sommers?

A. I didn't myself.

Q. On any of the occasions you spoke to him personally, didn't you try to get him to make a statement?

A. No sir.

Q. Either orally or written?

A. No sir.

Redirect examination.

By Mr. Bull:

Q. When you say you didn't try to get a statement either oral or written, what do you mean?

A. I didn't try to actually have him say in formal language anything about the case.

Q. Well, did you ask him anything about hos this occurred?

A. Yes.

[fol. 412] Q. And did he tell you what he knew about it?

Mr. Freedman: Objected to.

A. Presumably he told me what he knew about it.

Mr. Freedman: I move to strike out the answer.

Q. Do you mean presumably he told you, or presumably it was what he knew?

A. Presumably it was what he knew.

Q. Did he actually make any oral statements to you about the origin or cause of his infection?

Mr. Freedman: Objected to.

A. Yes.

Q. And those oral statements were such as you testified to before?

A. Yes.

Q. Did you engage Dr. Spaulding at the expense of the Company?

A. Yes.

Q. Mr. Freedman asked you if a settlement was ever discussed with Taylor. Will you tell us what settlement, if any, ever was discussed by you with Taylor, and what the discussions were.

Mr. Freedman: Objected to.

A. (Referring to memorandum.) Sometime around the latter part of January, Mr. Taylor asked what the Company was going to do for him, and at that time I explained to him, as simply as I could, the theory of maintenance and cure.

Mr. Freedman: Objected to, and I move to strike it out.

[fol. 413] A. (Continuing.) And informed him that we were paying him at the time and had paid him money which was for the account of his maintenance and cure.

Mr. Freedman: Objected to and I move to strike out the answer. I object to anything that Mr. Sommers said to Mr. Taylor.

Q. Go ahead, Mr. Sommers.

A. (Continuing.) I told him that we would see him through until he was competent to use his artificial limb, and that I did not believe we could pay him very much in addition to that.

Q. Was there any figure suggested?

A. Mr. Taylor asked me what I meant by an amount in addition, and I said "Oh, possibly $300 or $400".

Q. Is that all the discussion of any possible settlement you had with Mr. Taylor?

A. That was all. I take that back—sometime later on, Mr. Taylor—shortly before his last visit—Mr. Taylor asked—or rather suggested that he was ready to talk settlement, and on that particular occasion I was extremely busy and asked him to come back the following week or two, and one occasion—I was going beyond the question.

Q. I will ask you what you were going to say about on one occasion.

Mr. Freedman: Objected to.

A. On one occasion I believe it was the last time I saw Mr. Taylor, he stated that he was agreeable to accept anything the Company offered.

[fol. 414] Q. At any time that you did discuss any possible settlement with Taylor, did he inform you, or state to you, that he had ever had any accident on the Losmar?

Mr. Freedman: Objected to.

A. No sir.

Q. Did he advance any reason why you should pay him anything more, other than the fact that he had this Buergers disease?

Mr. Freedman: Objected to.

A. No sir.

Q. Did he ever tell you of anything which he considered negligence on the part of the Calmar Steamship Corporation or the steamship Losmar, which might have contributed to his ailment?

Mr. Freedman: Objected to.

A. Only insofar as he may have inferred negligence, when he mentioned that possible causes might have been the toilets and bathrooms of the vessel.

Mr. Freedman: I move to strike that out.

Recross-examination.

By Mr. Freedman:

Q. Isn't it a fact you offered him $2500 on one occasion and he refused it, Mr. Sommers?

A. No sir.

Q. Did you mention any specific figure to him?

A. The closest I got to mention any figure——

Q. The answer is yes or no, Mr. Sommers.

A. No sir.

[fol. 415] Q. Did you pay for any of the hospital expense?

A. No sir.

Q. Your only medical expense was Dr. Spaulding, is that right?

A. That is right.

Q. Did you pay for the artificial limb?

A. No sir.

Redirect examination.

By Mr. Bull:

Q. Do you know who did furnish the medical expense?
A. United States Marine Hospital.
Q. Do you know who furnished the artificial limb?
A. United States Marine Hospital.

Henry J. Baron, recalled.

Mr. Freedman: I object to any further examination of Mr. Baron as not proper examination.

Redirect examination.

By Mr. Bull:

Q. Mr. Baron, did you ever discuss with Taylor, or Taylor with you, the matter of having some other exper-examine him?

Mr. Freedman: Objected to.

A. He intimated to me at one time that either the hospital or the Company should bring in an expert.

[fol. 416] Mr. Freedman: I would like to know whether he said it or whether he implied it. If he implied it I ask to have the answer stricken out. What do you mean by intimated?

The Witness: He said it—he said it to me.

Q. What did you say to him?

Mr. Freedman: Objected to.

A. I said I couldn't pass upon whether he was getting the right treatment at the Marine Hospital, I wasn't a doctor. I said I would go back and talk it over with Mr. Sommers.

Q. And do you know what was done?
A. The result of that was that Mr. Sommers brought in Dr. Spaulding.

Recross-examination.

By Mr. Freedman:

Q. Do you know how painful Buergers disease is?
A. No, I don't.

Q. Did you ever hear anything about it?

A. No.

Q. Do you know that it causes one of the most excruciating pains, if not the most excruciating pains known to medical science?

A. No, I don't.

Q. Did you notice that Taylor was in pain at any of the times you saw him?

A. No.

[fol. 417] Q. Never was in pain—you saw him between thirty and thirty-five times?

A. Yes.

Q. And you never saw him in pain?

A. No.

Redirect examination.

By Mr. Bull:

Q. When you say you never saw him in pain, you mean you know he was not, or you don't know whether he was or not?

A. I don't know whether he was or not from my observations or conversations with him.

Q. Did he ever tell you, while you were talking with him, that at that particular time he did have any severe pain?

A. Yes—he did tell me that he had.

Q. That he had it while you were talking with him?

A. Not while I was talking with him, but that he had had pains from time to time.

[fol. 418] EXHIBIT "L-1"

Treasury Department,
Public Health Service

Abstract from Clinical Record

January 27, 1936.

Name: Charles W. Taylor.
Occupation: Seaman.
Age: 42 years.
Last Vessel: SS. Losmar.

Furnished hospital care from ——, 19—, to ——, 19—.

Furnished outpatient care from February 11, 1935, to February 16, 1935.

Diagnosis: Ringworm, right foot. Caries and calculus, dental. Pyorrhea.

Condition of Patient Upon Admission

Patient complained of inflammatory lesion between 4th and 5th right toes; medication prescribed for use twice daily; patient did not return for further treatment or examination of this condition.

Dental examination revealed the presence of caries, calculus, and pyorrhea. On Feb. 13, 1935, under novocaine anesthesia, teeth #5, 6, 7, 10, 11, 12, 14, 16 were extracted and alveolectomy performed; post operative treatment was given on Feb. 16, 1935, sutures removed, and extraction of #32, 28, 27, 26, 25, 24, 23, 22, 21 performed under novocaine anesthesia.

Condition of Patient on (Date) —— —, ——

Patient did not report after Feb. 16, 1935.

(Impression Service Seal)

By direction of the Medical Officer in Charge
(Signed) J. M. Lowrey, Surgeon, U. S. P. H. S.,
Executive Office- in Charge. (L. S.)

(Station:) U. S. Marine Hospital,
(Address:) Baltimore, Maryland.

[fol. 419] **Exhibit "L-2"**

Treasury Department,

United States Public Health Service

Abstract from Clinical Record of Gorgas Hospital

Name: Charles W. Taylor.
Occupation: M. S.
Age: 43 years.
Last Vessel: SS. "Losmar".

Furnished Hospital Care From Mar. 12, 1935 to May 4, 1935.

Furnished Outpatient Care From —— 19—, to ——, 19—.

Diagnosis: Osteomyelitis, chronic, proximal phalanx right fifth toe with draining sinus.

History of Illness or Accident as Elicited from Patient

About February 25, 1935, right foot became sore beneath toes. Skin between fourth toe and little toe cracked. Three days before admission to hospital right foot became swollen and very painful.

Condition of Patient Upon Admission

Toes and dorsum of right foot swollen and tender. Skin broken between little toe and fourth toe. The cracked skin between fourth and fifth toes indicated a sinus which extended downward apparently into the metatarso-phalangeal joint.

Digest of Treatment Given

On March 27 under general anesthesia the right fifth toe was disarticulated and infected area was drained. X-ray examination on April 9 showed no evidence of bony pathology in the remaining right fifth metatarsal. The fourth toe was normal in appearance.

[fol. 420] Condition of Patient (Upon Discharge May 4, 1935): Improved—able to work in 30 days

Remarks

To include available data of previous service admission, transfers or discharge of patient—None.

(Impression Service Seal)

(Sgd.) O. E. Denney, Surgeon, U. S. P. H. S., in Charge.

(Station:) Relief Station.
(Address:) Balboa Heights, C. Z.

May 4, 1936.

This form to be used for the convenience of firms or other interested persons, where the information has been authorized by the patient and the issue thereof authorized by the Surgeon General:

[fol. 421] EXHIBIT "L-3"

Treasury Department, Public Health Service

Abstract from Clinical Record

Name: Charles W. Taylor.
Occupation: Fireman.
Age: 42 years.
Last Vessel: SS. "Losmar".

Furnished hospital care from May 13, 1935 to Aug. 7, 1935.

Furnished outpatient care from ——, 19—, to ——, 19—.

Diagnosis: Infection, amputation stump, right little toe. Gangrene left foot. Thromboangiitis obliterans.

Condition of Patient Upon Admission ——.

Condition of Patient on (Date:) Aug. 7, 1935, Unimproved—Transferred to Stapleton Marine Hospital.

(Impression Service Seal.)

(Sgd.) L. O. Weldon, Senior Surgeon, U. S. P. H. S.,
Executive Officer In Charge of Hospital.

(Station:) U. S. Marine Hospital.
(Address:) Ellis Island N. Y.

SG.
3/19/36.

[fol. 422] EXHIBIT "L-4"

Reg. #51173

March 27, 1936.

Treasury Department, Public Health Service

Abstract from Clinical Record

Name: Taylor, Charles W.
Occupation: Fireman.
Age: 42 years.
Last Vessel: Losmar.

Furnished hospital care from August 7, 1935 to October 3, 1935.

Furnished outpatient care from ——, 19—, to ——, 19—. Diagnosis: Absence, acquired, of 4th and 5th toes, right foot. Infection, amputation, stump, 4th and 5th toes, right foot. Endarteris obliterans, right foot.

Condition of Patient Upon Admission

Patient states that in February, 1935, he reported to Marine Hospital, Philadelphia with a small crack in base of little toe. Crack increased in size, and in March webbing split between 4th and 5th toes. On March 12th he was taken off ship and sent to hospital in Canal Zone, at which time little toe was "dangling". The 5th toe was amputated at metatarsophalangeal articulation; infection set in and a reamputation was necessary at the Ellis Island Marine Hospital; and later the 4th toe was removed. Claims process is now spreading to 3rd toe.

Condition of Patient on (Date:) —— — ——

Extremities: Vessels palpable though not markedly sclerosed. Right calf muscles atrophic. Right foot shows amputation of 4th and 5th toes through head of metatarsals. Gaping wound here extending, to lateral aspect of 3rd toe, where tendons can be seen. No pulsation felt in this foot, but strong in leg. Reflexes normal. Physical examination was otherwise essentially negative.

[fol. 423] (The following are pathological and histological reports and blood findings as requested in your letter of March 18, 1936).

The tissue submitted was a section of the posterior tibial artery of the right leg. Grossly it was an elongated narrow cylindrical fibrous cord; walls thickened; 6 cm in length. Microscopically multiple sections showed essentially similar alteration. The lumin is completely obliterated by connective tissue, diffusely infiltrated by lymphocytes and few plasma cells. It is recanalized by many small endothelial lined spaces. In this area in two sections there are well formed arterioles with fairly thick muscular coats and elastic fibers. The architecture of the arterial wall is well preserved and shows focal lymphocyte infiltration and prominence of nutrient vessels. In the surrounding scar tissue there are many small thick walled arteries a medium sized vein and nerve fibers. Attached striated muscle shows some interstitial fibrosis.

Pathological diagnosis was thrombo-angiitis obliterans.

On 8/7/35 Wassermann and Kahn blood tests were negative. Urine examination 8/8/35 was negative.

Operation performed Sept. 6, 1935: Amputation, partial, of right leg.

Patient was discharged to Outpatient Department to return at intervals for reexamination, and later to be fitted with artificial limb.

(Impression Service Seal.)

By Direction of the Medical Officer in Charge (Sgd.) C. H. Waring, Senior Surgeon, U. S. P. H. S., Executive Officer.

(Address:) U. S. Marine Hospital, Stapleton, N. Y.

ERB:S.

[fol. 424] RESPONDENT'S EXHIBIT #1

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

10/10/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

10/16/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

Oct. 22, 1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

(Sgd.) C. W. Taylor.

[fol. 425] Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

October 29, 1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

(Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

11/6/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

11/13/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

[fol. 426] Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

11/19/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

11/26/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

12/3/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

[fol. 427] Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

12/10/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

12/17/1935.

Received from Calmar Steamship Corporation Twenty-eight—00/100 Dollars.

Account of advance against maintenance.

$28.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

12/31/1935.

Received from Calmar Steamship Corporation Twenty-eight—00/100 Dollars.

Account of advance against maintenance.

$28.00. (Sgd.) C. W. Taylor.

[fol. 428] Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

1/14/1936.

Received from Calmar Steamship Corporation Twenty-eight—00/100 Dollars.

Account of advance against maintenance.

$28.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

1/23/1936.

Received from Calmar Steamship Corporation Fifty-six—00/100 Dollars.

Account of advance against maintenance.

$56.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

2/6/1936.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

[fol. 429] Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

2/19/36.

Received from Calmar Steamship Corporation Twenty-eight—00/100 Dollars.

Account of advance against maintenance.

$28.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

3/3/1936.

Received from Calmar Steamship Corporation Twenty-eight—00/100 Dollars.

Account of advance against maintenance.

$28.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

3/10/1936.

Received from Calmar Steamship Corporation Twenty-eight—00/100 Dollars.

Account of advance against maintenance.

$28.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

[fol. 430] 6/14/1935.

Received from Calmar Steamship Corporation Ten—00/100 Dollars.

Account of advance against maintenance a/c personal injury INS Losmar P-3572.

$10.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

6/28/1935.

Received from Calmar Steamship Corporation Ten—00/100 Dollars.

Account of advance against maintenance.

$10.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

7/12/1935.

Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

$5.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

7/18/1935.

[fol. 431] Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

$5.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

7/30/1935.

Received from Calmar Steamship Corporation Fifteen—00/100 Dollars.

Account of advance against maintenance.

$15.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

8/8/1935.

Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

$5.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

8/16/1935.

Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

$5.00. (Sgd.) C. W. Taylor.

[fol. 432] Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

Aug. 22, 1935.

Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

(Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

Aug. 29, 1935.

Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

(Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

9/5/1935.

Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

$5.00. (Sgd.) C. W. Taylor.

[fol. 433] Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

9/12/1935.

Received from Calmar Steamship Corporation Five—00/100 Dollars.

Account of advance against maintenance.

$5.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

9/19/1935.

Received from Calmar Steamship Corporation Ten—00/100 Dollars.

Account of advance against maintenance.

$10.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

9/26/1935.

Received from Calmar Steamship Corporation Ten—00/100 Dollars.

Account of advance against maintenance.

$10.00. (Sgd.) C. W. Taylor.

Calmar Steamship Corporation

INS Losmar P-3572

Receipt Form

10/4/1935.

Received from Calmar Steamship Corporation Fourteen—00/100 Dollars.

Account of advance against maintenance.

$14.00. (Sgd.) C. W. Taylor.

[fol. 434] EXHIBIT "R-2"

Treasury Department,

United States Public Health Service

Office of U. S. Marine Hospital, Detroit, Michigan

May 28, 1936.

Dr. Maurice Seltzer, 7967 Castor Avenue, Philadelphia, Pennsylvania.

SIR:

In compliance with your request of May 17, we submit the following information in the case of Mr. Charles W. Taylor, Merchant Seaman, 659 Howard Avenue, Detroit, Michigan.

The patient was admitted to this hospital on March 16, 1932, his chief complaint being a marked hallux valgus of the right great toe, which was causing considerable pain at the time of admission, and according to the patient's statement had been causing trouble for some years, but had become much more painful in the past six months, to the extent that it interfered with his work.

At the time of admission examination revealed a marked hallux valgus deformity which was extremely painful. These findings were borne out by x-ray examination. An operation was performed on April 4, 1932, at which time a resection of the head of the first metatarsal of the right great toe was done. A general physical examination revealed a moderately severe astigmatism and a moderately severe dental caries. The patient's physical condition was otherwise negative. Blood pressure was 105/70. Chest and heart were negative for any pathological lesions. The [fol. 435] Wassermann was negative. Urinalysis was negative for albumin, sugar, casts and pus. Following the operation for the hallux valgus the patient recovered without complications and was bearing weight on the right foot at the end of three weeks.

The patient was discharged on May 23, 1932 as in no need of further hospitalization, and he stated at this time that his condition was somewhat improved.

Respectfully, (Sgd.) Wm. Y. Hollingsworth, Surgeon, U. S. P. H. S., Medical Officer in Charge.

JDL:EA.

[fol. 436] Exhibit "R-3"

(Copy)

Treasury Department,

Public Health Service

Abstract from Clinical Record

March 19, 1936.

Name: Charles W. Taylor.
Occupation: Merchant Seaman.
Age: 42 years.
Last vessel: S/S. "Losmar".
Furnished hospital care from ——, 19—, to ——, 19—.
Furnished outpatient care from Feb. 28, 1935, to Feb. 28, 1935.
Diagnosis: Furuncles, two, present on Left forearm and neck; Epidermophytosis, toes of both feet.

Condition of Patient Upon Admission

Furuncles, two, present on Left forearm and neck. Epidermophytosis, toes of both feet.

Urinalysis 2-28-1935 reports: Negative.

Blood Wasserman 3-4-1935 reports: Negative.

Condition of Patient on (Date:) 2-28-1935

Same. Patient only reported here once: 2-28-1935.

P. S.—In reply to letter from Freedman, Goldstein & Pechner, Phila., Pa., dated 3-18-36, the only laboratory work done on this case—patient only here once—was the Wassermann Test and the Test of the Urine. Both of these were Negative.

(Impression Service Seal.)

(Sgd.) (H. McG. Robertson), Med. Dir., Surgeon, U. S. P. H. S. (P. L. M.) In Charge.

(Station:) U. S. P. H. S. Relief Station.

(Address:) 225 Chestnut St., Phila., Pa. (To Seaman Charles W. Taylor, % 1501 Franklin Trust Bld'g., Phila., Pa.)

[fol. 437] IN UNITED STATES DISTRICT COURT

OPINION

SUR TRIAL HEARING ON LIBEL, ANSWER AND PROOFS

Argued November 18th, 1936

DICKINSON, J.:

Leave was granted to file Supplemental Briefs, which have now been received. The case raises questions which are of importance to seamen and vessel owners. It is likewise interesting because of the resourcefulness displayed by the Proctors for libellant and respondent.

The libellant is undoubtedly the victim of a real and serious affliction. It has within recent times come to be recognized as a distinct disease and is known by the distinctive name of Buerger's disease. Added interest was given to the trial by the feature that the man whose name has been given to the disease was a witness in the cause. We may premise that the causes of this disease are unknown or at least obscure. The symptoms however are readily recognizable by a diagnostitian. The effects upon the patient are very serious. One in acute cases is an intensity of pain during the course of the development of the disease. A later result is the necessity for an amputation of the affected parts. Here one result is the loss of the right foot and of the right leg below the knee. Finally there is a [fol. 438] probability of the recurrence and extension of the trouble. The physical cause or at least an accompaniment of the development of Buerger's disease is an interruption of the blood stream so that there is a malnutrition of the affected parts producing a condition of gangrene. The libellant has passed through all these phases to the one of amputation. What he has suffered commands the sympathy of all who have knowledge of what he has experienced and of his present condition.

The Pleaded Case and Defense

The libel has been drawn with skill. It sets forth three causes of action. One has its basis in a charge of negligence. The second is based on the obligation known as that of care or cure and maintenance. The third upon the liability of the respondent to pay the wages of a seaman to the end of the voyage for which he shipped.

The answer is a denial of negligence and in effect that all the obligations of the respondent under the second and third causes of action averred had been more than met. The only really controverted fact issue is that of negligence. The facts bearing upon the other issues are not in real controversy.

The Issue of Negligence

The negligence averred may be broadly stated to have been that of leaving in an unlighted passage way a pile of what are known to this record as retarders against which [fol. 439] the libellant struck his foot by which he sustained a laceration or cut of the little toe of his right foot, which in turn developed into the disease which made necessary the amputation of his right foot and part of the right leg. The averred negligence is denied, and further that the affliction from which the libellant has been and is now suffering has any casual connection with the stubbing of his toe as averred.

The other issues presented can be best dealt with in a general fact recital.

The Fact Situation

1. Negligence

The libellant in this case has displayed an intelligence far beyond that possessed by those who figure as claimants in damage cases. His Proctors have showed a very thorough study of the legal features of his case. The test of actionable negligence has been cynically defined to be whether the plaintiff can have been drilled into a sufficient knowledge of the law of negligence as will enable him to stand up under cross-examination. The libellant has met this test. His testimony may be accepted as a full presentation of the fact situation from his viewpoint.

The ship was out of commission and was in dock at Sparrows Point for a general overhauling and repair. This included the boilers. In them is a device called a retarder. [fol. 440] It is made of strips of metal five or six feet in length, three inches in width and one-eighth of an inch in thickness, twisted into spiral form. One of the boilers is known as the Central Boiler. It was necessary to remove the retarders from this. They were taken out and piled alongside the boiler. The ends from corrosive use become quite sharp. The theory of this branch of the libellant's case is the stumping of his foot against the sharp end of one of these retarders by which a cut in the little toe of his right foot was caused resulting in its consequences in Buerger's disease and the loss of his right foot and part of the leg. It was necessary to his case to offer evidence of this primal injury and its time and place. This the libellant did by his testimony, fixing February 9th, 1935 at 4 P. M., as the time and the location of the pile of these removed retarders as the place of the injury. Incidentally it may be here remarked that this initial averment is met with a most vigorous denial, it being asserted that the retarders had not been removed at the time libellant says he received his injury and were not so removed until some days afterwards, the date of which is given.

Passing this disputed part it was next necessary to attribute libellant's injury to some act of negligence on the part of the ship. This the libellant did by his testimony that the retarders were piled adjoining a passage way into the fire room. The passage way had a width of nine feet. [fol. 441] Enough space was left for a safe passage clear of the retarders. How did it come that the libellant stumbled over them? An answer to this question was anticipated. The lights were electric lights. The power to run these lights is supplied by the ship. When docked, however, the electric current is obtained from some source on shore or there is what this record calls "change from steam to air", whatever this may mean. There is a short interval of no light while this change is being made. Moreover the light from any electric system may blink or flicker or for a short interval go out altogether. Whether the occurrence here was from the one cause or the other is not very clear but whatever the cause the libellant testifies that just as he reached the entrance to the fire room the lights flickered or went out, what happened is again not clear. There would be suggested however the propriety of his waiting this momentary time until he could see his way. This was again anticipated by the libellant who testified that the lights did not flicker until the moment he had made his forward movement and too late for him to check it, and that his momentum carried him into the fire room and against the pile of retarders.

It may again be interpolated that the fact of any flicker or momentary change of the source of current supply, at the time asserted by the libellant, is vigorously denied.

2. Cause and Effect

Actionable negligence must have, as its effect or result, some damage to which it contributed. The negligence here averred might make the tort feasor answerable for the con- [fol. 442] sequences of some one stumbling over an obstruction. He would not be answerable however for a damage which merely followed chronologically the stumble but which had no causal connection with it. The distinction is between post hoc and propter hoc.

The libellant has been damaged by the loss of a foot and part of a leg. Admittedly the amputation of his foot was due to Buerger's disease. The question which is presented is whether the stumping of his toe had anything to do with his being afflicted with this disease.

The lamentable results which often, and indeed usually, attend the attempts of the lay mind to analyze and pass judgment on legal subjects may well cause the lawyer to approach with diffidence the expression of any opinion upon a medical question. It is however sometimes, as it is here, the duty of the Court to pass judgment in such cases. The best we can do in the present instance is this:

No expert witness has told us what is the cause of Buerger's disease. They all agree that the cause or causes belong to the unknown. This being so no one could say that trauma was a cause. It is always however preceded by some inflam-ation or obstruction of the blood vessels which retards the flow of the blood, thus preventing or diminishing the supply of the life fluid to some extremity or part of the body which thereby becomes affected. Suppose [fol. 443] a patient to be in the incipient condition which would ultimately lead to Buerger's disease. Suppose further the patient to experience trauma accompanied by a breaking of the skin. The expert opinion we understand to be that this might accelerate the development of the disease and thus be said, as the phrase employed in this case is, "to precipitate it".

In all fairness to the Doctors who testified in this case that the stumping of the patient's toe had nothing to do with the Buerger's disease, which afterwards developed, it should be said that their opinions were based upon the Hospital records. The libellant went to the Marine Hospital in Baltimore almost immediately after, certainly not more than two days after he stubbed his toe. The records of that Hospital neither in the description of the condition of the patient nor in any history of the case given, disclose any injury in the breaking of the skin of the toe. The foot or toes was in an inflamed condition. The Hospital surgeons at that time diagnosed the patient's trouble as ringworm. This would negative the existence of trauma as the cause of the condition found. When the fact feature of trauma with laceration was added, no witness testified that such a trauma might not have hastened the development of the disease. This however is far from saying that it caused it.

3. Neglect of Libellant

The libellant anticipating that his neglect to report his injury would subject him to criticism explained very plaus-[fol. 444] ibly that he did not do so because he regarded the happening as trivial. No seaman is prone to complain of slight hurts. The ship by the same token could not justly be criticised for not giving treatment for an injury of which it had not been informed. The record is barren of any evidence which would warrant a finding that the ship master or owners had shown any lack of consideration or feeling for the libellant when his affliction became known.

Cure and Maintenance

This case differs from the ordinary case of physical injury in this. A man may have sustained a broken leg or injuries resulting in a leg amputation. The bone may be set and knit resulting in no permanent damage or in a malformation causing lessened power and thus permanent damage or the amputation may be successfully performed resulting in no other damage than impaired power. In other words, the patient may be cured in the sense that no further surgical help can be given him and yet he be still the victim of a permanent injury.

The instant case differs in that the libellant is suffering from a disease which is progressive in character. Amputation of the affected foot was inevitable. Three have already been performed, and further amputation will, or at least may, be necessary. No cure has as yet in any real sense been affected. The patient is still in need of care and treatment and will or may be for the rest of his life or for an indefinite time before a cure can be pronounced, if ever.

[fol. 445] Fact Findings

Requests for Findings of Fact and Conclusions of Law were invited and have been submitted. Those of the libellant call for answers to 56 Requests for Fact Findings and 40 Conclusions of Law. Those of respondent for 31 and 5 respectively, or 131 in all. It is of course of convenience to an Appellate Court, and helpful to the Trial Court, that the latter should, in the words of Rule 46½ "find the fact specially and state separately its conclusions of law therein".

Facts have been very helpfully classified into evidentiary and ultimate facts. The former may be well nigh without number and in long trials are so; the latter are, at least relatively, few in number. We do not interpret Rule 46½ to mean that the trial Court should make a specific finding of every evidentiary fact, however trivial, although it may have some significance. We think the findings are to be limited to the ultimate facts unless there is an evidentiary fact which when found is controlling of the ultimate fact finding. There is in this observation no implied criticism of counsel. Such criticism would be ungracious for all the Requests are most admirably framed and betoken a careful study and accurate analysis of the case. We mean it only to explain why we have made fact findings of our own.

Discussion

1. Negligence

The case for the libellant is of the kind which leads to what are merely negative findings. He avers negligence [fol. 446] and must assume the burden of its proof. An expression of admiration cannot be withheld from the skill displayed in linking a chain of causes leading up to the affliction which has befallen the libellant. Sharp pointed retarders were piled alongside of a passage way which the libellant was required to use; that he should strike his toe against one might happen; that he should do so with the obstruction in plain sight is unlikely; the lights however are electric, the power, ordinarily supplied by the ship, is, when the ship is being repaired, supplied from the shore; when the change is being made the lights momentarily go out; this happened just at the moment the libellant entered upon the passage-way; in such a situation one would be expected to await the return of the light, the libellant had however at that instant begun his forward movement which he could not check and his momentum carried him against the obstruction. The argument which would lead the mind to the conclusion of negligence is as plausible and indeed forceful, as the array of facts is skilful. Our reaction to it is negative.

We are unconvinced of the negligence of the ship and hence unable to find it.

2. Causal Effect

The libellant is suffering from Buerger's disease and the amputation of his foot undoubtedly was the result of this. We are unable and hence refuse to find that this could be [fol. 447] ascribed to trauma as a cause. Assuming, however, a laceration of the toe, although in itself a slight and trivial injury, if the skin were broken, and further assuming the negligence of the ship, we would find such negligence to have contributed to the injury to the libellant, and in consequence the respondent to be answerable for the damages resulting. Having, however, refused to find negligence indemnity liability cannot be imposed upon respondent for the damages sustained by the libellant.

3. Cure and Maintenance.

The opinion accompanying the Osceola case, 189 U. S., 158, is so enlightening and so complete that the principle must be accepted that such an obligation rests upon ship and owners. It is wholly an independent doctrine with which the law of negligence has nothing to do. It is somewhat akin to the principle on which the workmen's compensation statutes are based. Men engaged in employments do get injured with or without negligence on the part of any one just as the machines in use may be damaged or destroyed. On what we know as common law principles, where there is no negligence imputable to any one, the damage flowing from personal injuries must be borne by the unfortunate workman just as property damage falls upon the owner of the property. Just as the Workmen's Compensation Acts place part of the personal injury damage upon the employer so likewise the Admiralty Law imposes upon ship and owners an obligation for the cure and maintenance of injured seamen. The obligation is imposed merely because of the injury not [fol. 448] because either employer or ship has contributed to its incurrence by any act of their own.

The Osceola case has however left open the question of the duration of the obligation. This secondary question did not arise in that case and the Court in consequence contented itself with the statement that the obligation continued "at least to the end of the voyage". It did not rule that the obligation did there end. Ordinarily all relations of crew to ship do and when the voyage is completed, the crew paid off and discharged and it would seem to be the logical view that all obligations ended with the relation of crew and ship.

Underlying all the supporting reasons for the doctrine mentioned in the Osceola case is that not merely of necessity but of humanity as well. An injured seaman must be taken care of by some one and the obligation is placed on those in whose service he was injured. The obligation clearly rests upon the ship until the end of the voyage.

What as to his after cure? There is little difference between throwing him overboard and casting a helpless seaman upon the shore or a wharf except in the latter case of the chance that some good Samaritan may assume the duty of taking care of him which the ship has refused to continue. Hence it has been held in a number of cases that the obligation of the ship does not end automatically with the voyage but extends for a reasonable time beyond this. This state-[fol. 449] ment of the doctrine does not supply us with a very helpful steering chart. What is a real one? There is a well recognized distinction between the obligation imposed upon a tort feasor by the law of negligence and that imposed by the maritime doctrine of cure and maintenance. By the former the injured party is to be indemnified for all the damage to which the negligence contributed; by the latter the obligation extends only to care and maintenance until a cure is effected. This distinction supplies us with a real guide. A seaman sustains an injury resulting in a broken leg. His ship takes care of him until the broken bone has been set and has knit and the patient discharged fully restored to health and strength. A claim for cure and maintenance could not be upheld but, if the broken leg had been due to the negligence of the ship or its unseaworthiness, the injured seaman could recover for all the damage he had sustained. On the other hand, if the fracture was such as that the broken bone did not properly knit, and it was necessary to reset it or amputate the leg, the obligation of the ship would continue until a surgical cure was effected.

Applying this indicated principle to the instant case, we find that the libellant has been no more cured after this third surgical operation than he was after the first or second. The disease from which he is suffering is a progressive one and the need for further amputations will recur necessitating further surgical and nursing care with its attendant maintenance and this will continue for the rest of his life. [fol. 450] For the expense of this care and maintenance the respondent is answerable.

4. Cure and Maintenance Cost

This is extremely difficult of estimate. The respondent met its obligation from June 14th, 1935 up to March 10th, 1936 by contributing the sum of $487.00. The libellant is 43 years of age. The expectancy of life at that age is 25.71, but his condition would lessen this. His pay aboard ship was $57.50 with keep. Taking all elements into consideration, including a present value award allowance, we find a fair and reasonable sum for the expense of future care and maintenance to be the sum of $7000.00, for which the libellant should have judgment, with costs.

We have made Findings of Fact and stated Conclusions of Law based thereon in compliance with Admiralty Rule 46½, which we incorporate herewith.

A formal decree or judgment in accordance herewith may be entered.

[fol. 451] In United States District Court

Findings of Fact and Conclusions of Law Made and Stated under Rule 46½

Findings of Fact

1. Libellant is a seaman in the Merchant Marine service and was a member of the crews of respondent's vessels.

2. Respondent is a body corporate engaged during the time which concerns this case and still is, in the coastwise steamship trade and as such was the owner and operator of the ships with which this cause concerns itself.

3. While a member of the crew of respondent's vessel and in its employ as such the libellant, following an injury received in the course of his employment but not proved to have been due to any negligence imputable to the respondent, became afflicted with the disease known as Buerger's disease from which he is -till suffering and will continue to suffer for the rest of his natural life.

4. Because of his physical condition libellant from February 12th, 1935 has been and still is in need of care and maintenance and will so continue to require care and maintenance for the remaining years of his natural life.

5. Respondent had contributed to the care and maintenance of the libellant from June 1935 up to March 10th, 1936 the sum of $487.00.

[fol. 452] 6. No cure of the libellant has as yet been effected nor will any be during the term of his natural life.

7. Libellant is 43 years of age.

8. The sum required to meet the expense of the cure and maintenance of the libellant during the time he will be in need of care and maintenance for which the respondent is answerable is the sum of $7000.00.

Conclusions of Law

1. The damages sustained by the libellant not having been found to be due to any negligence imputable to the respondent, it is not liable for indemnity damages due to injuries.

2. The respondent is however under the legal obligation to pay the cost and expense of the care and maintenance of the libellant until his cure can be effected.

3. An award or judgment in the sum of $7000.00, with costs, may be entered in favor of the libellant and against the respondent for such cure and maintenance.

[fol. 453] In United States District Court

Final Decree

And Now, to wit, January 15th, 1937, this cause having been heard upon the pleadings and proofs, and having been argued and submitted by the proctors for the respective parties, and due deliberation having been made thereon it is

Ordered, Adjudged and Decreed that the libellant, Charles W. Taylor, recover, of the respondent the sum of Seven Thousand Dollars ($7000.00) together with costs to be taxed by the Clerk and interest from the date of this decree. It is further

Ordered, Adjudged and Decreed that the libellant, Charles W. Taylor, shall have execution to enforce satisfaction of this decree as against Calmar Steamship Corporation, unless a notice of appeal be taken from this decree within the time limited by law and the rules and practice of this Court.

By the Court:

Dickinson, J.

[fol. 454] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL

To the Honorable the Judges of the District Court of the United States for the Eastern District of Pennsylvania:

The petition of Calmar Steamship Corporation, a corporation, the respondent in the above entitled cause, respectfully represents:

1. That on the 24th day of March 1936, Charles W. Taylor, the libellant herein, filed hi- libel in your Honorable Court against your petitioner to recover damages in the sum of $75,000, in a cause of action for personal injuries, and for the recovery of wages alleged to be due him, in an amount not specified, and for his maintenance and cure, during the period of his alleged disability, in such amount as to your Honorable Court might deem just and proper.

2. That the cause having been duly heard and submitted to your Honorable Court upon the pleadings, proofs and arguments of counsel, your Honorable Court, on the 4th day of December, 1936, filed an opinion holding that the damages sustained by the libellant, not having been found to be due to any negligence imputable to the respondent, the respondent was not liable for indemnity damages due to the injuries, but was under the legal obligation to pay the costs and expense of the care and maintenance of the libellant until his cure can be effected, and that an award or judgment [fol. 455] in the sum of $7,000, with costs may be entered in favor of the libellant for such cure and maintenance; and on the 15th day of January, 1937, entered a final decree awarding the libellant the sum of $7,000, together with costs to be taxed by the Clerk, and interest from the date of said decree.

3. That your petitioner believes and therefore avers, that the findings of fact and conclusions of law reached by your Honorable Court in said opinion, and upon which said award

was based, are erroneous, and that an injustice will be done to your petitioner should the decree entered in accordance therewith be carried into effect.

Wherefore your petitioner respectfully prays that it be allowed an appeal from said final decree to the Circuit Court of Appeals for the Third Circuit, and that a transcript of the proceedings and papers on which said decree was entered, duly authenticated, may be sent accordingly to the said Circuit Court of Appeals, and that the usual citation may issue, in order that said decree may be fully reviewed, and may be reversed by the said Circuit Court of Appeals in so far as it orders and decrees with respect to the several matters alleged as error in the Assignments of Error herewith filed.

And your petitioner will ever pray, etc.

Duncan & Mount, and Lewis, Wolff & Gourlay, by Otto Wolff, Jr., Proctors for Petitioner.

[fol. 456] *Duly sworn to by H. W. Warley. Jurat omitted in printing.*

[fol. 457] IN UNITED STATES DISTRICT COURT

ORDER ALLOWING APPEAL

And now, January 29th, 1937, upon consideration of the foregoing petition, it is ordered that the appeal prayed for be, and the same hereby is, allowed, and that all proceedings under the final decree herein entered on the 15th day of January, 1937, pending the final determination of the appeal hereby allowed, be, and the same hereby are, stayed by the Court. Security to be entered by the petitioner in the sum of Eight Thousand Dollars, ($8,000.00).

By the Court:

Dickinson, J.

[fol. 458] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR

The petitioner, Calmar Steamship Corporation, hereby assigns error to the opinion, findings and decree of the District Court in the above entitled cause, as follows:

First. The Court erred in entering a final decree, on the 15th day of January, 1937, in favor of the libellant, and therein adjudging as follows:

"Ordered, Adjudged and Decreed that the libellant Charles W. Taylor, recover of the respondent the sum of Seven thousand dollars ($7,000) together with costs to be taxed by the Clerk, and interest from the date of this decree."

Second. The Court erred in not dismissing the libel, and in not entering a decree for the respondent, with costs.

Third. The Court erred in finding as follows:

"While a member of the crew of respondent's vessel and in its employ as such the libellant, following an injury received in the course of his employment * * * became affected with the disease known as Buerger's Disease."

Fourth. The Court erred in finding that the libellant "will continue to suffer for the rest of his natural life" from Buerger's Disease.

[fol. 459] Fifth. The Court erred in finding that the libellant "still is in need of care and maintenance and will so continue to require care and maintenance for the remaining years of his natural life".

Sixth. The Court erred in finding as follows:

"No cure of the libellant has as yet been effected, nor will any be during the term of his natural life."

Seventh. The Court, having found that "the libellant will continue to suffer" from Buerger's Disease, "for the rest of his natural life", and that the libellant, therefore, cannot be cured, erred in finding that the respondent is "under the legal obligation to pay the cost and expense of the care and maintenance of libellant until his cure can be effected".

Eighth. The Court erred in finding, with respect to the libellant, as follows:

"The disease from which he is suffering is a progressive one and the need for further amputations will recur necessitating further surgical and nursing care with its attendant maintenance and this will continue for the rest of his life."

Ninth. The Court erred in finding as follows:

"The sum required to meet the expense of the cure and maintenance of the libellant during the time he will be in need of care and maintenance for which the respondent is answerable is the sum of $7,000."

[fol. 460] Tenth. The Court erred in awarding the libellant indemnity damages under the guise of maintenance and cure.

Eleventh. The Court erred in failing to find that the libellant's cure had been effected, so far as ordinary medical means extended, before March, 1936.

Twelfth. The Court erred in failing to find that the respondent had paid the libellant more than any maintenance and cure which might be due him.

Thirteenth. The Court erred in failing to find that the respondent had furnished or provided for the libellant's expenses of maintenance and cure for a reasonable time after the libellant left the respondent's steamship "Losmar", and for a reasonable time after the voyage.

Duncan & Mount, New York City; Lewis, Wolff & Gourlay, by Atto Wolff, Jr., Philadelphia, Pa.; Proctors for Calmar Steamship Corporation.

[fol. 461] IN UNITED STATES DISTRICT COURT

STIPULATION FOR TRANSCRIPT OF RECORD

To the Clerk of the District Court of the United States;

Please certify to the United States Circuit Court of Appeals for the Third Circuit, as the record in the above, the following:

1. Docket entries.
2. Libel, with interrogatory annexed.

3. Answer to the libel, with answer to libellant's interrogatory, and interrogatories addressed to libellant.

4. Libellant's testimony: Charles W. Taylor, libellant, Dr. Maurice Seltzer, Dr. James Kay, Dr. Ralph W. Lorry, James J. Aarosson (deposition).

5. Respondent's testimony: Dr. Leo Buerger, Dr. Harry V. Spaulding, Dr. Davis Warren Kramer, John W. Jimmyer (deposition), Joseph R. Guy (deposition), Calvin G. Collins, Jr. (deposition), George Green (deposition), Edgar E. Mulligan (deposition), Daniel Madison (deposition), Frank Zarraga (deposition), Stephen B. Whitmore (deposition), Walter H. Evans (deposition), Harry Wenig (deposition), Edwin A. Sommers (deposition), Henry J. Baron (deposition), Edwin A. Sommers—Sept. 11, 1936 (deposition).

[fol. 462] 6. Libellant's Exhibits:

1. Abstract of Baltimore Marine Hospital.
2. Abstract of Gorgas Hospital.
3. Abstract of Ellis Island Marine Hospital.
4. Abstract of Stapleton Marine Hospital.

7. Respondent's Exhibits:

R-1. Receipts for payments from respondent to libellant.
R-2. Libellant's drawing.
R-2. Letter from Medical officer in charge of Detroit Marine Hospital.
R-3. Abstract from Philadelphia Public Health Service.
Photographic Exhibit 1.
Photographic Exhibit 2.
Photographic Exhibit 3.

8. Opinion, findings and conclusions of trial court.

9. Final decree.

10. Petition for appeal, assignment of error, and order allowing appeal.

11. This stipulation.

It is stipulated and agreed that the libellant's exhibit Nos. 1, 2, 3 and 4, and the respondent's exhibits Nos. R-1, R-2 (letter from medical officer in charge of Detroit Marine Hospital) and R-3, shall be printed as a part of the Record, and that all other exhibits shall be lodged with the Clerk of the Circuit Court of Appeals as physical exhibits in the case.

Lewis, Wolff & Gourlay, by Frederick W. Gourlay, Proctors for Calmar Steamship Corporation, Appellant. Freedman, Goldstein & Pechner, by Abraham E. Freedman, Proctors for Charles W. Taylor, Appellee.

[fol. 463] IN UNITED STATES DISTRICT COURT

PETITION FOR APPEAL

To the Honorable the Judges of the Said Court:

The petition of Charles W. Taylor, a seaman, the libellant in the above entitled cause, respectffully represents:

1. That on or about the 24th day of March 1936, your petitioner, the libellant herein, filed his libel in your Honorable Court to recover damages in the sum of $75,000.00, in a cause of action for personal injuries, for maintenance and cure for the period of his disability and for the recovery of such a sum as your Honorable Court might deem to be due him for wages.

2. That your libellant brought his action and filed his libel without prepayment of costs under Act of July 1, 1918, C. 113, Sec. 1, 40 Stat. 683.

3. That the cause having been duly heard and submitted to your Honorable Court upon the pleadings, proofs and arguments, your Honorable Court, on December 4th, 1936, rendered its decision and filed an opinion holding that the damages not having been found to be due to any negligence imputable to the respondent, the respondent is not liable for any indemnity damages due to injuries; that the respondent is however under the legal obligation to pay the cost and expense of the care and maintenance of the libellant until his cure can be effected; and that an award or judgment in the sum of $7,000.00 with costs, may be entered in favor of the libellant and against the respondent for such cure and main- [fol. 464] tenance; and on January 15th, 1937, your Honorable Court, entered a final decree awarding the libellant the sum of $7,000.00, together with costs to be taxed by the Clerk and interest from the date of the decree.

4. That on January 29th, 1937, the respondent filed a petition praying that it be allowed an appeal from the final decree of your Honorable Court and on the same day an Order was entered by your Honorable Court allowing the appeal prayed for.

5. That your petitioner is advised, believes and therefore avers that the findings of fact and conclusions of law reached by your Honorable Court in its opinion and upon which its decision and the final decree were based are erroneous in that the said decision and opinion did not adjudge and the final decree did not decree that your petitioner was entitled to recover indemnity damages from the respondent.

Wherefore, your petitioner respectfully prays that he be allowed to file a cross appeal from said final decree to the next term of the Circuit Court of Appeals, for the Third Circuit, without prepayment of costs and without entry of security, and that a transcript of the proceedings and papers on which said decree was made, duly authenticated, may be sent accordingly to the said Circuit Court of Appeals, and that the usual citation may issue in order that the said decree may be fully reviewed and may be reversed by the said Circuit Court of Appeals, insofar as it orders and decrees the several matters alleged as error in the assignment of error herewith filed.

And your petitioner will ever pray, etc.

Freedman, Goldstein & Pechner, by Abraham E. Freedman, Proctors for Petitioner.

[fol. 465] *Duly sworn to by Abraham E. Freedman. Jurat omitted in printing.*

[fol. 466] IN UNITED STATES DISTRICT COURT

ASSIGNMENTS OF ERROR

The petitioner, Charles W. Taylor, hereby assigns error to the opinion, findings and decree of the District Court in the above entitled action as follows:

First. The District Court erred in finding as follows:

"The damages sustained by the libellant not having been found to be due to any negligence imputable to the respondent, it is not liable for indemnity damages due to injuries."

Second. The District Court erred in finding that libellant's injury was "not proved to have been due to any negligence imputable to the respondent."

Third. The District Court erred in holding as follows:

"We are unconvinced of the negligence of the ship and hence unable to find it."

Fourth. The District Court erred in failing to find that respondent was negligent.

Fifth. The District Court erred in failing to award the libellant indemnity damages.

Sixth. The District Court erred in failing to find that respondent's negligence was the direct cause of the cut, bruise and abrasion to libellant's right little toe.

Seventh. The District Court erred in failing to find that respondent's negligence was the proximate cause of the series of events which followed the original cut, bruise and abrasion and which culminated in gangrene, Buerger's dis- [fol. 467] ease and the amputation of libellant's right leg.

Eighth. The District Court erred in failing to award libellant wages for the balance of the voyage.

Ninth. The District Court erred in failing to award libellant two days wages for each day that respondent neglected to pay him his wages.

Freedman, Goldstein & Pechner, by Abraham E. Freedman, Proctors for Libellant.

In United States District Court

Order Allowing Appeal

And Now, March 15, 1937, upon consideration of the foregoing petition, it is ordered that the cross appeal prayed for, be, and the same hereby is, allowed, without prepayment of costs and without the entry of security and that all proceedings under the final decree herein entered on January 15th, 1937, pending the final determination of the appeal hereby allowed, be, and the same hereby are stayed by the Court.

By the Court:

Dickinson, J.

[fol. 468] Clerk's certificate to foregoing transcript omitted in printing.

[fol. 469] In United States Circuit Court of Appeals for the Third Circuit, March Term, 1937

No. 6358

Calmar Steamship Corp., Appellant,

vs.

Charles W. Taylor, Appellee

Order Assigning Judge—Filed June 4, 1937

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

And now, to-wit: this 4th day of June, A. D. 1937, it is ordered that Hon. Albert B. Maris, District Judge for the Eastern District of Pennsylvania, and Hon. —— ——, District Judge for the —— District of ——, be, and he is hereby assigned to sit in above case in order to make a full court.

Joseph Buffington, Circuit Judge.

[File endorsement omitted.]

[fol. 470] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1937

No. 6419

CHARLES W. TAYLOR, Appellant,

vs.

CALMAR STEAMSHIP CO., Appellee

ORDER ASSIGNING JUDGE—Filed June 4, 1937

Appeal from the District Court of the United States for the Eastern District of Pennsylvania

And now, to-wit: this 4th day of June, A. D. 1937, it is ordered that Hon. Albert B. Maris, District Judge for the Eastern District of Pennsylvania, and Hon. —— ——, District Judge for the —— District of ——, be, and he is hereby assigned to sit in above case in order to make a full court.

Joseph Buffington, Circuit Judge.

[File endorsement omitted.]

[fol. 471] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 6358. No. 6419

[Title omitted]

MINUTE ENTRY

And afterwards, to wit, the 4th day of June, 1937, come the parties aforesaid by their counsel aforesaid, and this case being called for argument sur pleadings and briefs, before the Honorable J. Whitaker Thompson and Honorable John Biggs, Jr., Circuit Judges, and Honorable Albert B. Maris, District Judge, and the Court not being fully advised in the premises, takes further time for the consideration thereof,

And afterwards, to wit, on the 8th day of September, 1937, come the parties aforesaid by their counsel aforesaid, and the Court, now being fully advised in the premises, renders the following decision:

[fol. 472] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1937

No. 6358

CALMAR STEAMSHIP CORPORATION, Respondent-Appellant

v.

CHARLES W. TAYLOR, Libellant-Appellee

MARCH TERM, 1937

No. 6419

CHARLES W. TAYLOR, Libellant-Appellant,

v.

CALMAR STEAMSHIP CORPORATION, Respondent-Appellee

Appeals from Final Decree of the District Court of the United States for the Eastern District of Pennsylvania

Before Thompson and Biggs, Circuit Judges, and Maris, District Judge

OPINION—Filed September 8, 1937

MARIS, District Judge.

Both libellant and respondent have appealed from the final decree of the court below in an admiralty case. The libellant was a seaman on respondent's steamship "Losmar" and became afflicted with Buerger's disease while in [fol. 473] the service of the ship. Respondent's appeal complains of the allowance by the court below of the sum of $7,000 to libellant as the present value of the cost of his maintenance and cure during the remainder of his life. Libellant appeals from the action of the court below in refusing to award him damages for his injuries suffered, as he contends, because of respondent's negligence.

Libellant at the time of the trial was forty-three years old and had followed the sea for twenty-eight years. He shipped on the "Losmar" on October 16, 1934 as a fireman.

On February 9, 1935 at about four o'clock in the afternoon at the beginning of his watch he proceeded into the engine room to take over his duties and then went into the boiler room through the companionway which led from the engine room. In doing so his right foot struck against some steel retarders that were lying on the floor of the boiler room. These are used to retard the heat and gases in the boilers and from their use become quite sharp. They are taken out from time to time when the boiler is overhauled, and are placed on the floor of the boiler room. Just as libellant was about to enter the boiler room and before his foot struck the retarders the electric lights in the ship flickered and went out and it was in the ensuing darkness that the accident occurred. The lights went out because at the time the electric generators which provide the current for the ship's lights were being changed from the ship's steam to compressed air furnished from the shore, the ship then being in a shipyard at Sparrows Point, Maryland. There was a sharp conflict in the testimony as to whether the retarders were actually on the floor of the boiler room and as to whether the ship's lights went out at the time of the accident. The court below, however, found in the affirmative as to both and we are satisfied to accept its finding.

[fol. 474] Libellant's testimony was that following this accident he found that his right shoe had been cut through over the small toe and that the toe had been cut, bruised and swollen. He washed the wound with mercurochrome and two days later went to the Marine Hospital at Baltimore where he received medication for the foot. The record of the hospital, however, does not mention a cut or bruise, but refers only to an "inflammatory lesion between fourth and fifth toes" which was diagnosed as "ringworm, right foot." It is undisputed that the condition of libellant's toe grew worse, that on a voyage of the "Losmar" to the west coast it was necessary to remove him to a hospital in the Panama Canal Zone on March 12th, where he remained until May 4th, having in the meantime suffered an amputation of the toe, and that when he was brought back to New York he was treated at the Marine Hospitals at Ellis Island and Stapleton where he remained until October 3rd. During this period his condition was diagnosed as thrombo-angiitis obliterans, commonly called Buerger's

Disease. In the course of treatment for this disease he suffered three further amputations, the last involving his entire right leg below the knee. On October 3rd he was discharged to the out-patient department to return at intervals for re-examination and later to be fitted with an artificial limb. He was so fitted in December, 1935, and obtained the limb on January 15, 1936.

On March 24, 1936 libellant filed his libel in personam setting up two causes of action. The first was for damages under Sec. 33 of the Merchant Marine Act, 1920 (46 U. S. C. Sec. 688). In order to recover in this cause of action it was incumbent on the libellant to prove that the personal injuries which he suffered in the course of his employment on the respondent's vessel were the result of negligence imputable to the respondent in failing to provide him a rea- [fol. 475] sonably safe place in which to work. The negligence charged consisted in leaving in an improper place the pile of retarders upon which libellant stubbed his toe and also in permitting the ship's lights to go out without warning. The court below was, however, unconvinced of the respondent's negligence and found as a fact that libellant's injury was not proved to have been due to any negligence imputable to the respondent. With this finding we agree. We think the evidence fairly establishes that the retarders were placed in a customary and proper location. The change of motive power for the generators from steam to compressed air, involving a temporary shutting off of the ship's lights, was also shown to be a customary and necessary operation with which libellant was thoroughly familiar. Under these circumstances we are clear that respondent did not breach its duty to libellant. It was not an insurer, being liable only if the injury was reasonably foreseeable. Pittsburgh S. S. Co. v. Palo, 64 F. (2d) 198. It could not, however, have foreseen that libellant would walk into the pile of retarders just at the moment the lights went out. It follows that the court below was right in holding that there was no evidence of negligence imputable to respondent.

Libellant's second cause of action presents more serious questions. It was for maintenance and cure, which he claimed for the remainder of his life. It is not disputed that, while in the service of the respondent's vessel, libellant became afflicted with Buerger's disease, in the course of treatment for which he suffered four amputations, finally losing his right leg below the knee. Buerger's disease is an obscure disease of the arteries and veins. It was defined in this case by Dr. Buerger, for whom it was named, as an inflammatory, morbid process of the arteries and veins. Inflammation takes place on the walls of these vessels, most often in the feet and legs. Coincident with this, extensive [fol. 476] clotting appears, followed by a process of scar tissue replacement so that the affected arteries and veins are converted into hard fibrous parts, closing off the circulation of the members affected. This is followed subsequently by the secondary and visible effects, lesions, deteriorating changes and gangrene. The origin of the disease is not known and there is no known cure. The usual treatment consists of amputation of the affected parts and this often results in arresting the disease. All the medical witnesses, however, agreed that the disease is incurable and that its manifestations are very likely to recur in other extremities during the life of the patient. They also agreed that regular periodical observation of the patient and continual care and treatment is of great importance in arresting the progress of the disease. Upon this evidence the court below found that the libellant would require such care for the remaining years of his life and awarded him the sum of $7,000, as the present equivalent of the cost of his maintenance and cure during the remaining period which he may be expected to live.

Respondent strongly argues that in awarding libellant maintenance and cure for the remainder of his life the court below committed error. There is no doubt as to the obligation of a vessel and her owner to provide maintenance and cure for a seaman who falls sick or is wounded in her service. The Osceola, 189 U. S. 158. This right extends to a fireman. The North America, 5 Ben. 486, Fed. Cas. No. 10314. The word "cure" is used in its original meaning of care, and means proper care of the seaman and not a positive cure, which may be impossible. The Atlantic, Abb. Adm. 451, Fed. Cas. No. 620; The Mars, 149 Fed. 729. The duty is to furnish means of cure and to use all reasonable means for that purpose. Brown v. Overton, 1 Spr. 462, Fed. Cas. No. 2,024. This obligation may con- [fol. 477] tinue after the voyage ends. Reed v. Canfield, 1 Sumn. 195, Fed. Cas. No. 11,641; The Mars, supra; The Bouker No. 2, 241 Fed. 831, cert. den. sub nom. Jones v.

Bouker Contracting Co., 245 U. S. 647. The duty is to give proper care to the seaman for a reasonable time during which medical treatment may be expected to effect a cure. What is a reasonable time depends on the facts of each case. The Bouker No. 2, supra. The time may, however, extend beyond the time of the seaman's discharge from the hospital. Skolar v. Lehigh Valley R. Co., 60 F. (2d) 893.

As we have indicated, the libellant is suffering from an incurable disease contracted while in the service of respondent's vessel. This alone would not entitle him to maintenance and care by the respondent for life since the obligation of the latter ends when it has provided him with the ordinary means of cure which medical science affords. However, in the present case we have the further fact that the incurable disease from which the libellant suffers is of a progressive nature and is very likely to produce fresh manifestations in the future in other parts of his body. The uncontradicted evidence indicates that continuing care and treatment is of the utmost importance in arresting the further progress of the disease. Under these circumstances we cannot say that the ordinary means which medical science affords for the treatment and care of this disease will be exhausted prior to his death. On the contrary during the remainder of his life medical care will be necessary to restrain the ravages of the disease. His remaining life is, therefore, a reasonable time during which to provide maintenance and cure. It follows under the principles of the admiralty law to which we have referred that he is entitled to the cost of his maintenance and care from the respondent during the remainder of his life. In so holding we have not overlooked the dicta appearing in a few cases (The Kenil- [fol. 478] worth, 137 Fed. 1003; Raymond v. The Ella S. Thayer, 40 Fed. 902) to the contrary effect. Those cases were clearly distinguishable on their facts, however, and the question before us was not present in them. The underlying basis for the rule requiring the provision of maintenance and cure is one of common humanity. A seaman rendered helpless in the service of his ship may not be cast adrift, but must be cared for at the ship's expense so long as care is reasonably required and may be effective in checking his malady or curing his wounds and restoring his health. This principle applies with peculiar force to the facts of this case.

One further question remains. Is libellant entitled to an award at this time of the present value of the cost of that maintenance and care during the remainder of his life? The alternative would be to award him in this suit maintenance and care up to the time of trial only and to require him to bring additional suits in the future to recover the amounts expended or incurred by him for maintenance and care during the remainder of his life. This no doubt he would have a right to do but to compel it would be to impose an unwarranted burden upon a disabled seaman. In this case libellant has elected to claim the present value of the amounts which he may reasonably be expected to have to pay in the future. While this is necessarily but an approximation and may in fact turn out to be more or less than the amount actually required, nevertheless we are satisfied that libellant is entitled to receive the cost of his maintenance and cure on this basis if he desires it and can reasonably establish that cost. It is true that respondent's obligation, if it does not provide maintenance and care itself, is to reimburse libellant for his expenditures for these purposes, and is not one for damages. But we see no reason why the obligation to reimburse the cost of maintenance [fol. 479] and care in the future may not be liquidated on the basis of a lump sum representing the present value of that cost for the period during which, according to the experience of mankind, libellant may be expected to live. This is a liquidation of future payments, not of damages, although it is arrived at in exactly the same way as damages for the loss of future earnings are computed, and we think it provides quite as just a result in the one case as in the other.

Respondent finally urges that the amount allowed by the court below, $7,000, is not supported by the evidence and is excessive. As to this we can only say that we have carefully reviewed the evidence and are satisfied that the sum is a reasonable present liquidation of what libellant's maintenance and care may be expected to cost during the remainder of his life.

We conclude that the action of the court below upon each cause of action was right. Its decree is, therefore, affirmed.

A true Copy. Teste:

—— ——, Clerk of the United States Circuit Court of Appeals for the Third Circuit.

[fol. 480] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 19—

No. 6358

CALMAR STEAMSHIP CORP., Respondent-Appellant,

vs.

CHARLES W. TAYLOR, Libellant-Appellee

JUDGMENT—Filed September 8, 1937

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, September 8, 1937.

John Biggs, Jr., Circuit Judge.

[File endorsement omitted.]

[fol. 481] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT, MARCH TERM, 1937

No. 6419

CHARLES W. TAYLOR, Libellant-Appellant,

vs.

CALMAR STEAMSHIP CORP., Respondent-Appellee

JUDGMENT—Filed September 8, 1937

Appeal from the District Court of the United States, for the Eastern District of Pennsylvania

This cause came on to be heard on the transcript of record from the District Court of the United States, for the

Eastern District of Pennsylvania, and was argued by counsel.

On consideration whereof, it is now here ordered, adjudged, and decreed by this Court that the decree of the said District Court in this cause be, and the same is hereby affirmed, with costs.

Philadelphia, September 8, 1937.

John Biggs, Jr., Circuit Judge.

[File endorsement omitted.]

[fols. 482-492] Petition for rehearing covering 11 pages, filed October 8, 1937, omitted from this print. It was denied and nothing more by order of October 14, 1937.

[fol. 493] IN UNITED STATES CIRCUIT COURT OF APPEALS FOR THE THIRD CIRCUIT

No. 6419.

[Title omitted]

ORDER DENYING PETITION FOR REHEARING—Filed October 14, 1937

And Now, to wit, October 14, 1937, after due consideration, the petition for rehearing in the above-entitled case is hereby denied.

Philadelphia, —— —, ——.

J. W. Thompson, Circuit Judge.

[File endorsement omitted.]

[fol. 494] Clerk's certificate to foregoing transcript omitted in printing.

SUPREME COURT OF THE UNITED STATES

ORDER ALLOWING CERTIORARI—Filed January 3, 1938

The petition herein for a writ of certiorari to the United States Circuit Court of Appeals for the Third Circuit is granted. And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.